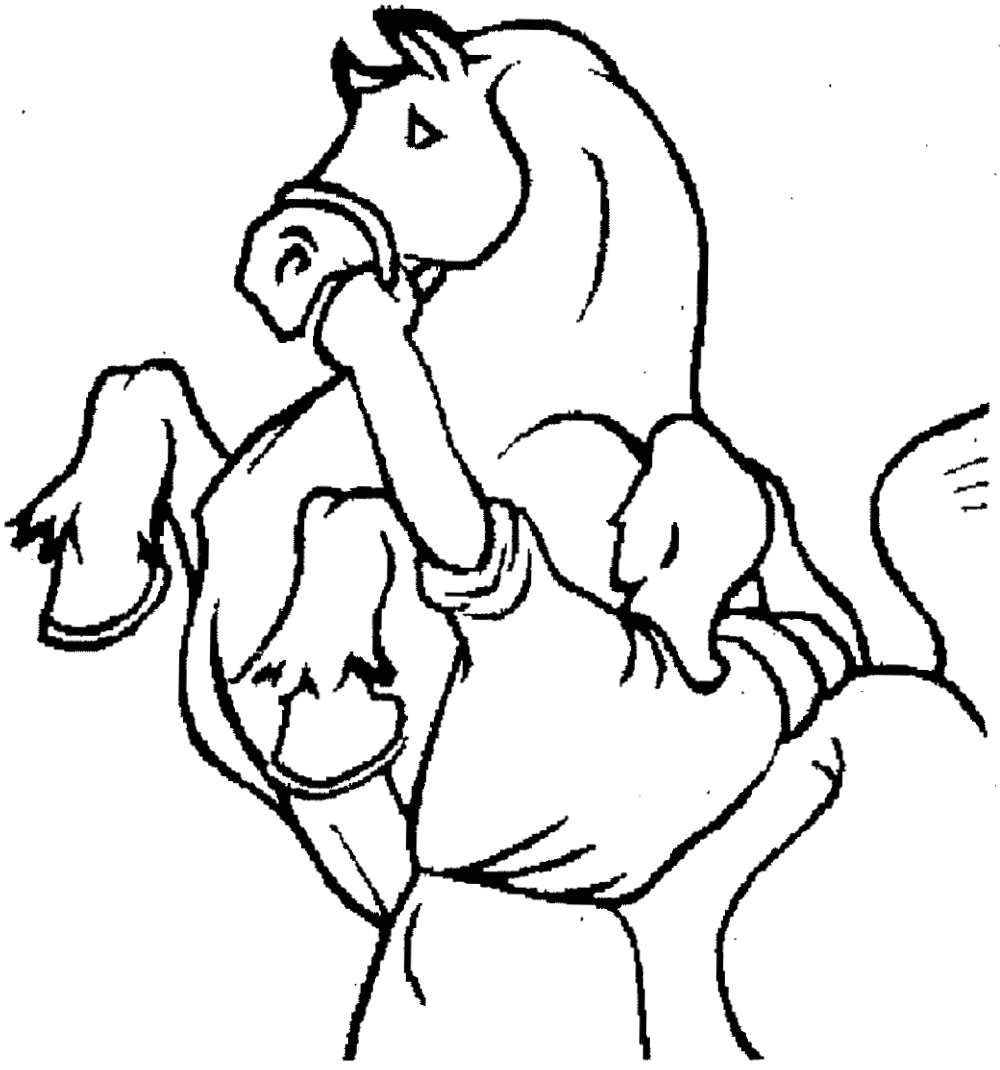
# Federal Trade Commission

## Bureau of Competition

Susan A. Creighton, Director



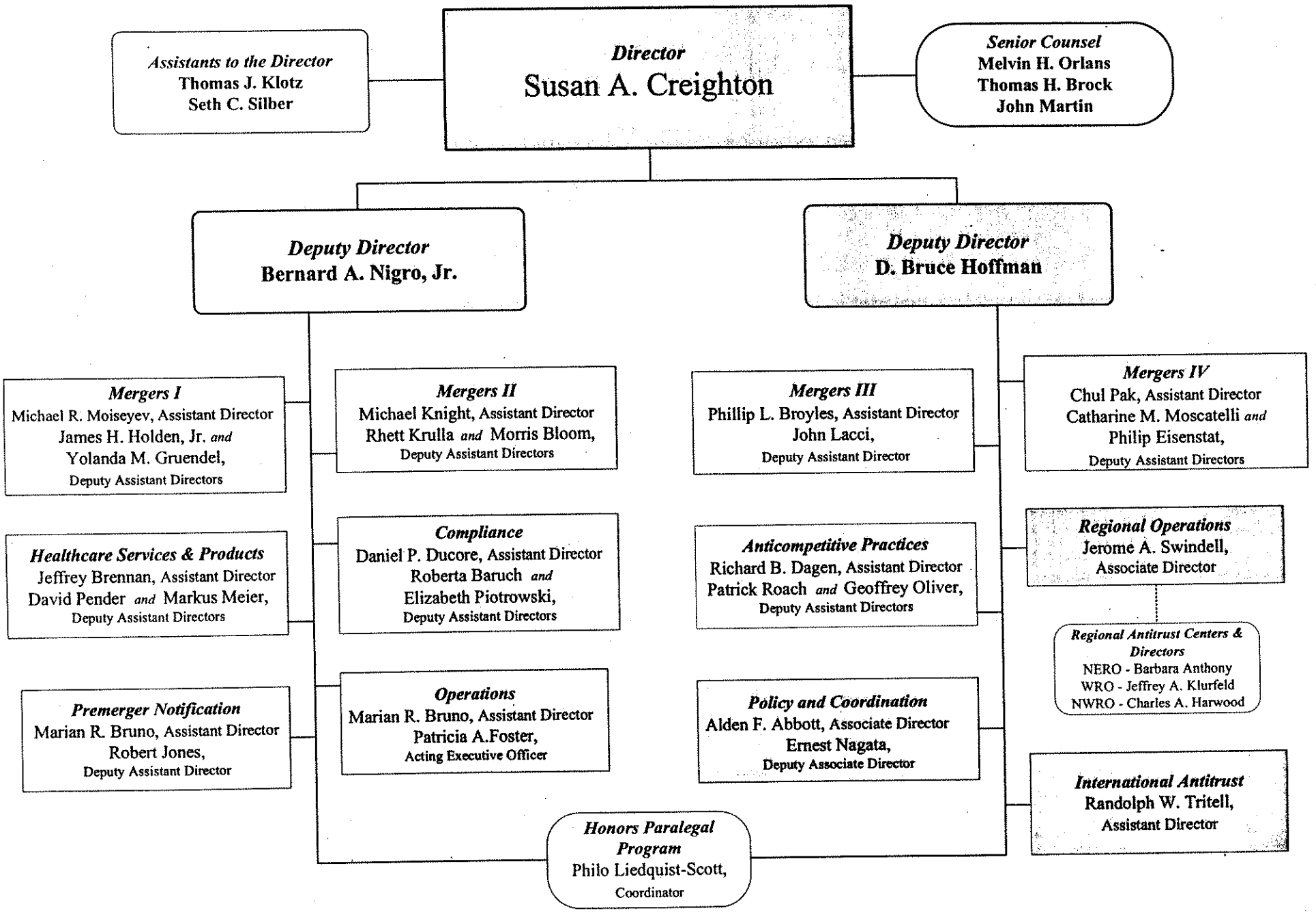
**Antitrust Enforcement Activities**
**Fiscal Year 2000 - March 15, 2004**

**ABA Antitrust Section Spring Meeting 2004**

March 1, 2004

FEDERAL TRADE COMMISSION

# Bureau of Competition



# ABA ANTITRUST SECTION
# SPRING MEETING

*Summary of Bureau of Competition Activity*
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# ABA ANTITRUST SECTION SPRING MEETING

## *Summary of Bureau of Competition Activity Fiscal Year 2000 Through March 15, 2004*

## *I. Mergers*

### A. *Consent Orders*

***Agrium, Inc.*** (Final Order November 13, 2000): A consent order requires Agrium to divest a deepwater terminal near Portland, Oregon, an up water terminal in central Washington and other assets settling charges concerning its proposed acquisition of the nitrogen fertilizer business of *Union Oil Company of California*. Agrium and Unocal are the leading producers in the Northwest of nitrogen fertilizer – anhydrous ammonia, urea and UAN 32% solution – ingredients used for plant growth.

***Airgas, Inc.*** (Final Order December 18, 2001): Airgas, Inc., the nation's largest distributor of industrial, medical, and specialty gases, settled antitrust charges that its January 2000 acquisition of Mallinckrodt, Inc.'s *Puritan Bennett Medical Gas Business* eliminated competition in the North American market for the production and sale of nitrous oxide. Under terms of the order, Airgas is required to divest two nitrous oxide plants and related assets to Air Liquide America Corporation within 10 days after the Commission issues its final order. Nitrous oxide is a clear, odorless gas used mainly in dental and surgical procedures as an analgesic agent or as a supplement to anesthesia.

***Albertson's, Inc.*** (Final Order December 8, 2000): The final order, modified after the public comment period, does not require the divestiture of a Lucky (American Stores Company) store in Lompoc, California to Ralph's. Albertson's Inc. agreed to divest 104 supermarkets and *American Stores Company* agreed to divest 40 supermarkets to settle charges that Albertson's acquisition of American Stores raised antitrust concerns in 57 markets in California, Nevada and New Mexico. The divestiture agreement is the largest retail divestiture of supermarkets ever required by the Commission.

***AmericaOnline, Inc.*** (Final Order April 17, 2001): AOL and *Time Warner Inc.* settled Commission concerns relating to their proposed merger. The order requires AOL Time Warner

to open its cable system to competitor internet service providers. In addition, the company is prohibited from interfering with content passed along the bandwidth contracted for by non-affiliated internet service providers; and prohibited from interfering with the ability of non-affiliated providers of interactive television services to interact with interactive signals that AOL Time Warner agreed to carry.

***Amgen Inc.*** (Final Order September 3, 2002): Amgen settled antitrust charges that its proposed $16 billion acquisition of *Immunex Corporation* would reduce competition and tend to create a monopoly in the biopharmaceutical markets for neutrophil (white blood cell) regeneration factors; tumor necrosis factor (TNF) inhibitors; and interleukin-1 (IL-1) inhibitors. The consent order requires the firms to sell all of Immunex's assets related to Leukine - a neutrophil regeneration factor - to Schering AG; license certain intellectual property rights to TNF inhibitors to Serono S.A.; and license certain intellectual property rights related to IL-1 inhibitors to Regeneron Pharmaceuticals Inc.

***Associated Octel Company Limited*** (Final Order December 22, 1999): Associated Octel settled charges that its acquisition of *Oboadler Company* would eliminate direct competition and raise prices in the highly concentrated market for the manufacture and sale of lead antiknock compounds. Under terms of the order, Octel agreed to supply Oboadler's current distributor, Allchem Industries, Inc., with lead antiknock compounds for resale in the United States for 15 years.

***Baxter International, Inc.*** (Final Order February 3, 2003): Baxter settled Commission concerns stemming from its $316 million proposed acquisition of *Wyeth Corporation*'s generic injectable drug business and agreed to divest several pharmaceutical products. The Commission charged that the acquisition would reduce competition in the manufacture and sale of propofol (a general anesthetic); new injectable iron replacement therapies; metoclopramide (used to treat nausea); and vecuronium and pancuronium (neuromuscular blocking agents used to temporarily freeze muscles during surgery). The consent order requires divestitures in each of the pharmaceutical markets.

***Bayer AG*** (Final Order August 2, 2002): A consent order permits Bayer to purchase *Aventis CropScience Holdings S.A.* from Aventis S.A. The order requires Bayer to divest businesses and assets in the following four major markets: new generation chemical insecticide products; new generation chemical insecticide active ingredients; post-emergent grass herbicides for spring wheat; and cool weather cotton defoliants. According to the complaint, the transaction as proposed would result in the elimination of both actual and potential competition in the four markets; increase barriers to entry; reduce innovation competition for certain products; and increase the possibility of coordinated interaction between competitors.

***The Boeing Company*** (Final Order January 5, 2001): The consent order permits the acquisition of *Hughes Space and Communications*, a subsidiary of General Motors Corporation, but prohibits Boeing from providing systems engineering and technical assistance (SETA) to the

U.S. Department of Defense for a specific classified program. According to the complaint, Boeing is the sole supplier of SETA programs and Hughes is one of two competing contractors.

***BP Amoco p.l.c.*** (Final Order August 29, 2000): BP Amoco settled charges that its acquisition of *Atlantic Richfield Company* (ARCO) would lessen competition in the production and sale of crude oil in several United States markets. The order requires BP to divest ARCO's complete free standing businesses relating to oil production on Alaska's North Slope to Philips Petroleum Company within 30 days.

***Ceridian Corporation*** (Final Order April 6, 2000): A consent order requires Ceridian to grant licenses to new and existing firms that provide commercial credit cards (known as "trucking fleet-cards") used by over-the-road trucking companies to make purchases at retail locations. The order settles charges that Ceridian's consummated acquisitions of *NTS Corporation* and *Trendar Corporation* gave Ceridian the power to control the markets for the provision of trucking fleet cards and the systems used to read them at truck stops throughout the country.

***Chevron Corporation*** (Final Order January 4, 2002): A consent order permitted the $45 billion merger of Chevron and Texaco In., but required significant divestitures in the petroleum industry, including gasoline marketing assets, refining and bulk supply facilities, crude oil pipeline interests and terminaling facilities.

***Computer Sciences Corporation*** (Final Order January 26, 2000): Final consent order permitted the acquisition of *Mynd Corporation* and required the divestiture of Mynd's Claims Outcome Advisor System to Insurance Services Office, Inc. Claims assessment systems are used by insurance companies to evaluate appropriate payments for claims of bodily injury and to evaluate return-to-work plans in workers compensation matters.

***Dainippon Ink and Chemicals, Inc.*** (Final Order March 13, 2003): Dainippon agreed to divest the perylene business of its U.S. subsidiary, *Sun Chemical Corporation*, to Ciba Specialty Chemicals Inc. and Ciba Specialty Chemicals Corporation to settle allegations that its proposed acquisition of Bayer Corporation's high-performance pigment manufacturing facility would eliminate competition in the highly concentrated world market for perylenes – organic pigments used to impart unique shades of red color to products, including coatings, plastics and fibers.

***Delhaize Freres et cie "Le Lion" S.A.*** (Final Order May 30, 2001): The consent order permitted the merger of Establissements Delhaize Freres et Cie "Le Lion" S.A. and Delhaize America, Inc. with *Hannaford Bros. Co.* and required the sale of 37 Hannaford supermarkets and one Hannaford site to three different buyers.

***Deutsche Gelatine-Fabriken Stoess AG*** (Final Order April 17, 2002): A consent order allowed DGF to complete its $170 million acquisition of *Leiner Davis Gelatin Corporation* and its *Goodman Fielder USA, Inc.* subsidiary under terms that the entire pigskin and beef hide gelatin business of Goodman Fielder would be excluded from the transaction. The complaint

issued with the order alleged that if the firms were allowed to consummate the transaction, as originally proposed, they would account for more than 50 percent of the U.S. market for these gelatin products used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The consent order requiring the restructured transaction was negotiated after the Commission authorized staff to seek a preliminary injunction in federal district court to block the parties from consummating the transaction.

***Diageo plc*** (Final Order December 19, 2001): Diageo and Vivendi Universal S.A. resolved antitrust concerns regarding Diageo's and Pernod Ricard S.A.'s joint acquisition of Vivendi's *Seagram Spirits and Wine Business* that would combine the second- and third- largest rum producers in the United States. The consent order, among other things, required Diageo to divest the Malibu rum business worldwide to a Commission-approved buyer within six months of the acquisition of Seagram. On October 23, 2001, the Commission authorized staff to seek a preliminary injunction in federal district court to block the transaction.

***Dominion Resources, Inc.*** (Final Order December 14, 1999): A consent order permits Dominion's acquisition of *Consolidated Natural Gas Company* but requires the divestiture of Consolidated's Virginia Natural Gas, Inc. The complaint alleged that the merger would combine the dominant provider of electric power in Virginia with the primary distributor of natural gas in southeastern Virginia.

***Dow Chemical Company, The*** (Final Order March 15, 2001): Dow settled antitrust concerns relating to its proposed merger with *Union Carbide Corporation*. Dow agreed to divest and license intellectual property necessary to the production of linear low-density polyethylene - an ingredient used in premium plastic products such as trash bags and sealable food pouches - to BP Amoco plc.

***DSM N.V.*** (Final Order January 6, 2004): A consent order permitted DSM N.V. to acquire the *Vitamins and Fine Chemicals Division of Roche Holding AG* but requires DSM to divest its phytase business to BASF AG within 10 days after the transaction is completed. Phytase is an enzyme added to certain animal feed to promote the digestion of nutrients necessary for livestock production.

***Duke Energy Corporation*** (Final Order May 9, 2000): Duke agreed to divest 2,780 miles of gas gathering pipeline in Kansas, Oklahoma and Texas to settle antitrust concerns stemming from Duke's and *Phillips Petroleum Company*'s proposed merger of their natural gas gathering and processing businesses; and it's proposed acquisition of gas gathering assets in central Oklahoma from Conoco Inc. and Mitchell Energy and Development Corporation The new company will be known as Duke Energy Field Services, L.L.C.

***El Paso Energy Corporation*** (Final Order January 30, 2001): A final order allowed El Paso Energy Corporation to acquire *PG&E Gas Transmission Teco, Inc.* and *PG&E Gas Transmission*

*Texas Company* (subsidiaries of Pacific Gas & Electric) with the provision that it divest its interest in the Oasis Pipe Line Company; PG&E's share of the Teco Pipeline; and the Matagorda Island Offshore production area. The divestitures ensure that competition is maintained for natural gas transportation in three Texas markets.

***El Paso Energy Corporation*** (Final Order March 19, 2001): A modified consent order allows the merger of El Paso and *Coastal Corporation* and requires the divestiture of more than 2,500 miles of gas pipeline system in Florida, New York and the Midwest. The modifications relate to the establishment of the Development Fund for the Green Canyon/Tarpon pipeline acquirer and is described in the final order.

***El Paso Energy Corporation*** (Final Order January 6, 2000): A final order ensures competition in the markets for natural gas transportation out of the Gulf of Mexico and into the southeastern United States. The consent order permitted El Paso's $6 billion merger with *Sonat Inc.* and requires the divestiture of Sea Robin Pipeline Company; Sonat's one-third ownership interest in Destin Pipeline Company, L.L.C.; and, the East Tennessee Natural Gas Company.

***Exxon Corporation*** (Final Order January 30, 2001): A consent order settled antitrust concerns stemming from Exxon's proposed acquisition of *Mobil Corporation*, and required the largest retail divestiture in Commission history. The divestitures, representing only a fraction of the worldwide assets of Exxon and Mobil, include 2,431 gas stations; an Exxon refinery in California; a pipeline; and other assets. According to the complaint, the proposed merger would injure competition in moderately concentrated markets – California gasoline refining; marketing and retail sales of gasoline in the Northeast, Mid-Atlantic, and in the State of Texas; and in the highly concentrated markets for jet turbine oil.

***Fidelity National Financial, Inc.*** (Final Order February 17, 2000): A consent order settled charges that Fidelity's acquisition of *Chicago Title Corporation* would reduce competition for title information services in San Luis Obispo, Tehama, Napa, Merced, Yolo, and San Benito, California. The order requires the divestiture of title plants in each of the six areas.

***FMC Corporation*** (Final Order May 19, 2000): The consent order requires FMC to divest its phosphorus pentasulfide business in Lawrence, Kansas to Peak Investments, LLC and Solutia Inc.'s phosphate assets in Augusta, Georgia to Societe Chimique Prayon-Rupel to settle charges that the proposed FMC/Solutia joint venture could substantially lessen competition in the United States market for pure phosphoric acid and phosphorus pentasulfide.

***GenCorp Inc.*** (Final Order December 19, 2003): A consent order allowed GenCorp Inc. to acquire *Atlantic Research Corporation* while requiring the divestiture of Atlantic's in-space liquid propulsion business within six months of consummating the transaction. According to the complaint issued with the consent order, the transaction as originally planned would have lessened competition in the United States in four different types of in-space propulsion engines: monopropellant thrusters; bipropellant apogee thrusters; dual mode apogee thrusters; and

biopropellant attitude control thrusters.

***General Electric Company*** (Final Order January 28, 2004): A final consent order settled antitrust concerns stemming from General Electric Company's proposed acquisition of *Agfa-Gevaert N.V.*'s nondestructive testing business. According to the complaint issued with the consent order, the transaction as proposed would have eliminated competition in the United States markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages - equipment used to inspect the tolerance of materials with damaging them or impairing their future usefulness. The consent order requires General Electric to divest its worldwide Panametrics ultrasonic NDT business to R/D Tech, Inc. within 20 days after the transaction is completed.

***Hoechst AG*** (Final Order January 18, 2000): A consent order settled charges stemming from Hoechst's merger with *Rhone-Poulenc S.A.* According to the complaint, the merger (the merged firm would be renamed Aventis S.A.) raised antitrust concerns in the market for cellulose acetate and direct thrombin acetate. The order requires the divestiture of the subsidiary, Rhodia, a specialty chemicals firm that produces cellulose acetate.

***INA-Holding Schaeffler KG*** (Final Order February 15, 2002): The consent order permits INA's acquisition of *FAG Kugelfischer Georg Schafer AG* but requires the divestiture of FAG's cartridge ball screw support bearing business to Aktiebolaget SKF within 20 business days after the consummation of the INA/FAG transaction. According to the complaint issued with the consent order, the acquisition, as planned, would create a monopoly in the market worldwide.

***Koch Industries, Inc.*** (Final Order January 31, 2001): A consent order settles allegations that Entergy-Koch LP's (a limited partnership owned equally by *Entergy Corporation* and Koch) acquisition of 50 percent of the Gulf South Pipeline Company, LP from Koch would lessen competition for the sale of electricity to consumers in Louisiana and western Mississippi and the distribution of natural gas to consumers in New Orleans and Baton Rouge. Entergy is the regulated electric and natural gas utility in parts of Louisiana and Mississippi. The order requires Entergy to establish a transparent process to buy natural gas and natural gas transportation that will assist state regulators in determining whether Entergy purchased gas supplies at inflated prices from its Entergy-Koch partnership.

***Koninklijke Ahold NV*** (Final Order December 7, 2001): Ahold would be permitted to acquire *Bruno's Supermarkets, Inc.* under terms of a consent order, but would be required to divest two BI-LO supermarkets in Georgia - one Milledgeville, and one in Sandersville. The Commission's complaint charged that the acquisition as originally proposed would reduce competition in the retail sale of food and grocery items in supermarkets in the area and would eliminate direct competition between supermarkets owned and controlled by Ahold and those owned or controlled by Bruno's.

***Kroger Company*** (Final Order January 10, 2000): Final order requires Kroger and *Fred Meyer*

*Stores, Inc.* to divest eight supermarkets to settle charges that the acquisition of Fred Meyer would increase concentration and decrease competition in Arizona, Wyoming, and Utah. Under terms of the order, two Smith's Food & Drug Centers will be sold to Nash-Finch Company; one "City Market" will be sold to Albertson's Inc.; and five supermarkets (two "City Markets"; two Fry's, and one Smith's) will be sold to Fleming Companies, Inc.

***Kroger Company*** (Final Order November 8, 1999): A final order settled charges stemming from Kroger Company's acquisition of *The John C. Groub Company*. The order requires the divestiture of three supermarkets in Columbus and Madison, Indiana to Roundy's, Inc., one of the largest food wholesalers in the United States.

***Lafarge Corporation*** (Final Order August 8, 2001): The consent order required the divestiture of Blue Circle Industries PLC's cement business serving the Great Lakes region of Ohio, Michigan, Illinois, Wisconsin and New York; its cement business in the Syracuse, New York; and its lime business in the southeast United States. These divestitures settled antitrust concerns stemming from Lafarge's proposed merger with Blue Circle. The two firms are market leaders in the industry for cement and lime.

***MacDermid, Inc.*** (Final Order February 3, 2000): A consent order permits MacDermid's acquisition of *Polyfibron Technologies, Inc.* and requires the divestiture, among other things, of Polyfibron's liquid photopolymer business to Chemence Inc. According to the complaint, the acquisition would result in a monopoly in the production, distribution and sale of liquid and solid photopolymer in North America. Photopolymers are used to make flexographic printing plates.

***Manheim Auctions, Inc.*** (Final Order November 13, 2000): The consent order settles antitrust concerns stemming from the acquisition of *ADT Automotive Holdings, Inc.*, the nation's third largest operator of wholesale motor vehicle auctions. The order requires Manheim to divest nine auctions in Kansas City, Missouri; Denver and Colorado Springs, Colorado; Atlanta, Georgia; San Francisco, California; Seattle, Washington; Tampa, Orlando and Daytona Beach, Florida; and Phoenix, Arizona.

***MCN*** (Final Order May 15, 2001): A final order permitted the $4 billion merger of MCN, a natural gas utility servicing communities in Michigan, and *DTE*, a public utility engaged in the generation and sale of electricity in Detroit and southeastern Michigan. The consent order, designed to resolve Commission concerns that the merger would lessen competition in the local distribution of electricity and in the local distribution of natural gas in the city of Detroit and in the Michigan counties of Macomb, Monroe, Oakland, Washtenaw and Wayne. MCN is the parent of Michigan Consolidated Gas Company and DTE is the parent holding company of The Detroit Edison Company.

***Metso Oyj*** (Final Order October 23, 2001): Metso settled charges that if its acquisition of *Svedala Industri AB* were allowed to proceed as planned, competition would be lessened in four rock processing equipment markets: primary gyratory crushers; jaw crushers; cone crushers; and

grinding mills. The firms agreed to divest Metso's worldwide primary gyratory crusher and grinding mill businesses and Svedala's worldwide jaw crusher and cone crusher businesses. The three crusher businesses would be purchased by Sandvik AB, a Swedish corporation; the grinding mill business would be purchased by Outokumpu of Finland. Metso and Svedala are the two largest suppliers of rock processing equipment in the world.

***MSC. Software Corporation*** (Final Order August 14, 2002): MSC settled charges that its 1999 acquisitions of *Universal Analytics, Inc.* and *Computerized Structural Analysis & Research Corp.* eliminated competition between the three firms in the development and application of engineering software. The administrative complaint issued October 2000, alleged that the two acquisitions would eliminate competition for advanced versions of Nastran, an engineering simulation software program used throughout the aerospace and automotive industries. The consent order required MSC to divest at least one clone copy of its current advance Nastran through royalty-free perpetual, non-exclusive licenses to one or two acquirers approved by the Commission.

***Nestle Holdings, Inc.*** (Final Order February 8, 2002): Nestle settled antitrust charges that its $10.3 billion proposed acquisition of *Ralston Purina Company* would substantially lessen competition in the United States market for dry cat food through the elimination of direct competition between the two firms and increase the likelihood that the combined firm could unilaterally exercise market power. The order requires the divestiture of Ralston's Meow Mix and Alley Cat brands to J.W. Childs Equity Partners II, L.P.

***Novartis AG*** (Final Order December 19, 2000): The consent order permits the merger of Novartis and *AstraZeneca PLC* into a new Swiss company, Syngenta AG. The order requires Novartis to divest its worldwide foliar fungicide business (based on the strobilurin chemical class) to Bayer Ag; and requires AstraZeneca to divest its worldwide corn herbicide business (based on the active ingredient acetochlor) to Dow AgroSciences LLC.

***Pfizer Inc.*** (Final Order May 27, 2003): A final consent order permits Pfizer Inc.'s acquisition of *Pharmacia Corporation* while requiring the divestiture of various products including extended release drugs used in the treatment of an overactive bladder; hormone replacement therapies; erectile dysfunction; canine arthritis; and motion sickness. Novartis AG, Neurocrine Biosciences, Inc., Schering-Plough Corporation, Johnson & Johnson, Insight Pharmaceuticals Corporation, and Cadbury Schweppes are named in the order as potential buyers of the various pharmaceuticals and products.

***Pfizer Inc.*** (Final Order July 28, 2000): Final consent order permits Pfizer's merger with *Warner-Lambert Company* and requires divestitures in several pharmaceutical markets including: Pfizer's RID brand of head lice treatment; Pfizer's antidepressant drug, Celexa; Warner's Cognex, a drug used in the treatment of Alzheimer's disease; and assets relating to the Epidermal Growth Factor receptor tryosine kinase inhibitor - drugs under development to treat solid cancerous tumors such as head and neck, non-small cell lung, breast, ovarian, pancreas and

colorectal cancers.

***Philip Morris Companies, Inc.*** (Final Order February 27, 2001): The consent order permits the merger of Philip Morris and *Nabisco Holdings Corporation* while settling charges that the merger of the two food companies would reduce competition in the already highly-concentrated food product markets. Under terms of the order, the parties are required to divest Nabisco's dry-mix gelatin, dry-mix pudding, no-bake dessert, and baking powder assets to The Jel Sert Company and Nabisco's intense mints assets to Hershey Foods Corporation.

***Phillips Petroleum Company*** (Final Order February 7, 2003): A final consent order allows the merger of Phillips Petroleum and *Conoco Inc.* but requires certain divestitures and other relief to maintain competition in the gasoline refining market in specific areas of the United States. Among the assets to be divested are refineries, propane terminals, and natural gas gathering facilities. The combined firm will be known as ConocoPhillips.

***Precision Castparts Corporation*** (Final Order December 21, 1999): A final order requires the divestiture of large titanium stainless steel and large nickel-based superalloy production assets (structural cast metals used in the manufacture of aerospace components) to settle antitrust concerns stemming from its acquisition of *Wyman-Gordon Company*. The order requires Precision Castparts to divest Wyman-Gordon's titanium foundry in Albany, Oregon and Wyman-Gordon's Large Cast Parts foundry in Groton, Connecticut.

***Quest Diagnostics, Inc.*** (Final Order April 3, 2003): Quest Diagnostics settled antitrust concerns that its proposed acquisition of *Unilab Corporation* would substantially increase concentration in the clinical laboratory testing services market by agreeing to divest clinical laboratory testing assets in Northern California to Laboratory Corporation of America.

***Reckitt & Colman plc*** (Final Order January 18, 2000): A final order permits Reckitt & Colman to acquire *Benckiser N.V.* from NRV Vermogenswerwaltung GmbH but requires the divestiture of Benckiser's Scrub Free® and Delicare® business to Church & Dwight, Inc., producers of household cleaning products.

***RHI AG*** (Final Order March 21, 2001): A consent order permits the acquisition of *Global Industrial Technologies, Inc.* and requires the divestiture of two refractories manufacturing facilities – Global's Hammond, Indiana and Marelan, Quebec plants – to Resco Products, Inc. According to the complaint, the proposed acquisition would create the largest producer of refractories in North America with dominant positions in the magnesia - carbon brick refractory market and in the high alumina brick refractory market. Refractories are used to line furnaces in many industries that involve the heating or containment of solids, liquids, or gases at high temperatures.

***Rhodia, Donau Chemie AG*** (Final Order April 21, 2000): Rhodia divested certain assets to resolve antitrust concerns stemming from its acquisition of *Allbright & Wilson PLC*. The

consent order permits the acquisition but requires the divestiture of Albright's interest in its United States phosphoric acid joint venture to its joint venture partner, Potash Corporation of Saskatchewan.

***Service Corporation International*** (Final Order June 29, 2000): Service Corporation International divested the *LaGrone Funeral Home*, acquired in 1994, to settle charges that the acquisition gave Service Corporation a monopoly in the provision of funeral services in Roswell, New Mexico. The order also requires Service Corporation, for ten years, to obtain prior Commission approval before acquiring any funeral home serving Chaves County, New Mexico.

***Shaw's Supermarkets, Inc.*** (Final Order April 5, 2000): A consent order settled charges that Shaw's proposed acquisition of *Star Markets, Inc.* could eliminate supermarket competition and increase prices in the greater Boston metropolitan area. The consent order permits the acquisition and requires the divestiture of three Shaw supermarkets and seven Star markets in eight communities.

***Shell Oil Company*** (Final Order November 18, 2002): Shell Oil Company was allowed to complete its $1.8 billion acquisition of *Pennzoil-Quaker State Company* but required to divest certain assets to maintain healthy competition in the refining and marketing of Group II paraffinic base oil in the United States and Canada. Under terms of the consent order, Shell and Pennzoil must divest its 50 percent interest in Excel Paralubes (a base oil refinery in Westlake, Louisiana) and freeze Pennzoil's right to obtain additional Group II supply under a contract with ExxonMobil at approximately current levels (up to 6,500 barrels of base oil per day).

***Siemens AG*** (Final Order May 18, 2001): Siemens settled charges relating to its proposed $9 billion acquisition of *Atecs Mannesmann AG*, a subsidiary of Vodafone. The consent order requires, among other things, the divestiture of Vodafone's Mannesmann Dematic Postal Automation business to Northrop Grumman Corporation. Siemens and Vodafone, through its Dematic subsidiary, are the two leading suppliers of postal automation systems in the world.

***SmithKline Beecham plc*** (Final Order December 26, 2001): Under terms of a final consent order settling charges stemming from the merger of SmithKline and *Glaxo Wellcome plc*, the parties agreed to divest pharmaceutical products in six markets: antiemetics; the antibiotic, ceftazidime; oral and intravenous antiviral drugs for the treatment of herpes; topical antiviral drugs for the treatment of genital herpes; and over-the-counter H-2 blocker acid relief products.

***Solvay S.A.*** (Final Order June 25, 2002): Solvay settled antitrust concerns stemming from its proposed acquisition of *Ausimont S.p.A.* from Italenergia S.p.A., and agreed to divest its U.S. polyvinylidene fluoride (PVDF) operations and its interest in Alventia LLC, a joint venture which manufactures the main raw material for PVDF. According to the complaint, the proposed acquisition would lessen competition in two markets: the production and sale of all grades of PVDF; and the production and sale of melt-processible grades of PVDF.

***Southern Union Company*** (Final Order July 16, 2003): Southern Union Company settled antitrust concerns stemming from its proposed acquisition of the *Panhandle pipeline* from CMS Energy Corporation. The consent order permitted the acquisition but required Southern Union to terminate an agreement to manage the Central pipeline which transports natural gas to several counties in Missouri and Kansas.

***Tyco International, Ltd.*** (Final Order December 5, 2000): Tyco settled antitrust concerns relating to its acquisition of *Mallinckrodt, Inc.* Tyco agreed to divest its endotracheal tube business to Hudson RCI. The consent order permitted the acquisition.

***Valero Energy Corporation*** (Final Order February 22, 2002): The consent order permitted Valero to complete its $6 billion merger with *Ultramar Diamond Shamrock Corporation,* but required the divestiture of Ultramar's Golden Eagle Refinery, bulk gasoline contracts, and 70 Ultramar retail service stations in Northern California to a Commission-approved acquirer. According to the complaint, the merger as originally proposed, would have lessened competition in two refining markets in California resulting in consumers paying more than $150 million annually if the price of CARB gasoline increased just one cent per gallon. CARB gasoline meets the specifications of the California Air Resources Board.

***Valspar Corporation*** (Final Order January 26, 2001): Final order permitted Valspar's acquisition of *Lilly Industries, Inc.*, but requires Valspar to divest its mirror coatings business to Spraylet Corporation. Mirror coatings are applied to the back of a piece of glass in order to produce a mirror.

***VNU N.V.*** (Final Order December 7, 1999): VNU N.V. settled antitrust concerns that its proposed acquisition of *Nielsen Media Research, Inc.* would restrict competition in the market for advertising expenditure measurement services in the United States. The order requires VNU to divest its Competitive Media Reporting division, the nations's largest supplier in the specialized market.

***Wal-Mart Stores, Inc.*** (Final Order February 27, 2003): A consent order settled Commission concerns that Wal-Mart's proposed acquisition of the largest supermarket chain in Puerto Rico, *Supermercados Amigo, Inc.*, would eliminate competition between supercenters and club stores owned or controlled by Wal-Mart and supermarkets owned or controlled by Amigo. While the consent order permits the acquisition, it requires Wal-Mart to divest four Amigo supermarkets in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico to Supermercados Maximo.

***Winn-Dixie Stores, Inc.*** (Final Order February 14, 2000): A consent order permitted Winn-Dixie's acquisition of 68 supermarkets and other assets from bankrupt *Jitney-Jungle Stores of America, Inc.* The order prohibits Winn-Dixie, among other things, from acquiring any interest in four specified Jitney-Jungle supermarkets without obtaining prior Commission approval. The sale of the 68 supermarkets was also approved by the U.S. Bankruptcy Court for the Eastern District of Louisiana.

## B. Authorizations to Seek Preliminary Injunctions

***BP Amoco p.l.c.*** (February 2, 2000): Commission authorized staff to file a motion in federal district court to prevent the merger of BP Amoco p.l.c. and *Atlantic Richfield Company.* The complaint, filed in the U.S. District Court for the Northern District of California, San Francisco Division on February 4, 2000, alleged that the merger would reduce competition in the exploration and production of Alaska North Slope crude oil and its sale to West Coast refineries, and in the market for pipeline and storage facilities in Cushing, Oklahoma. The merger would combine: (1) the two largest producers of crude oil on the North Slope of Alaska; (2) the two largest suppliers of Alaska North Slope crude oil to refineries in California and Washington; (3) and the two most successful competitors in bidding for exploration leases on the North Slope. On March 15, 2000, five days before the start of the trial, the defendants and the Commission agreed to seek adjournment of the federal court proceedings to enter into consent negotiations. The consent order became final August 29, 2000.

***Conso International Corporation*** (August 2, 2000): Conso International Corporation, owner of the Simplicity brand of home sewing patterns, abandoned its proposed acquisition of *McCall Pattern Company* after the Commission filed a motion for a preliminary injunction in the United States District Court for the Southern District of New York. The complaint charged that the acquisition would reduce the number of United States sewing pattern designers and producers from three to two, creating a firm with more than 75% of the domestic unit sales of domestic home sewing patterns.

***Cytyc Corporation*** (June 24, 2002): The Commission authorized staff to seek a preliminary injunction to block the acquisition of Digene Corporation on grounds that the combination of the two firms would reduce competition and increase consumer prices within the highly concentrated market for primary cervical cancer screening tests, both now and in the future. The parties abandoned the transaction before court papers could be filed.

***Deutsche Gelatine-Fabriken Stoess AG*** (January 15, 2002): The Commission authorized staff to seek a preliminary injunction to block DGF's proposed acquisition of *Leiner Davis Gelatin Corporation* and its *Goodman Fielder USA, Inc.* subsidiary. According to the Commission this transaction, if allowed to proceed as planned, would increase the likelihood of anticompetitive activity in the U.S. market for pigskin and beef hide gelatin, used by the food industry as an ingredient in edible products and by the pharmaceutical industry to produce capsules and tablets. The combination of the two firms would account for more than 50 percent of the relevant market in the U.S. A proposed consent agreement designed to remedy the significant antitrust concerns was accepted for public comment March 7, 2002; the consent order was finalized April 17, 2002.

***Diageo plc*** (October 23, 2001): The Commission authorized staff to file a motion for a preliminary injunction to block the proposed acquisition of *Vivendi Universal S.A.'s Seagram*

*Wine and Spirits Business* on grounds that the transaction, would not only combine the second- and third-largest rum producers in the U.S. eliminating actual competition between the firms, but could also create higher prices for consumers of rum. A consent order permitted the acquisition, with certain conditions.

***The Hearst Trust and The Hearst Corporation*** (April 5, 2001): Hearst and its First DataBank subsidiary were charged with illegally acquiring a monopoly over a key type of drug information database used by pharmacists, hospitals, health plans, and other health care professionals through Hearst's 1998 acquisition of it main competitor, *Medi-Span*. The complaint, filed in the U.S. District Court for the District of Columbia, asked the court to either order Hearst to create a new competitor to replace Medi-Span or forfeit its profits from the anticompetitive price increases that followed the acquisition of its only competitor. The complaint further alleged that the acquisition was consummated as a result of Hearst illegally withholding documents required for the premerger antitrust review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. On December 18, 2001, a federal district court entered a proposed Final Order and Stipulation requiring Hearst to pay $19 million as disgorgement of unlawful profits and to divest Medi-Span to Facts and Comparisons. This settlement marks the first time the Commission has sought either divestiture or disgorgement of profits in a federal court action for a consummated merger. A separate complaint to settle allegations that The Hearst Trust and The Hearst Corporation subsidiary, violated the reporting requirements of the Hart-Scott-Rodino Act was filed October 11, 2001. In that settlement, Hearst paid $4 million in civil penalties.

***H.J. Heinz Company*** (July 7, 2000): The Commission authorized staff to file a motion for a preliminary injunction in federal district court on grounds that the proposed $185 million acquisition of *Milnot Holding Company*, owner of Beech-Nut Nutrition Corporation, would reduce the number of competitors in the baby food market from three to two – creating a duopoly. The complaint was filed in the U.S. District Court for the District of Columbia on July 14, 2000. The federal district court denied the Commission's request for a preliminary injunction on October 19, 2000. On April 27,2001, the U.S. District Court of Appeals for the District of Columbia reversed the federal district court decision and remanded for entry of a preliminary injunction against Heinz and Beech-Nut. Within minutes of the Appeals court decision, the parties abandoned the transaction.

***Kroger Company/Raley's Corporation*** (October 2, 2002): The preliminary injunction authorized by the Commission during the investigation into Kroger's acquisition of 18 Raley's supermarkets in the Las Vegas, Nevada area was not filed. After staff determined that the transaction would promote healthy competition in the Las Vegas/Henderson area due to the rapid growth of the market and the presence of Wal-Mart, Albertson's, Kroger and Safeway - the four major competitors in the area, the investigation was closed.

***Kroger Company/Winn-Dixie*** (June 2, 2000): The Commission authorized staff to file a motion in federal district court to block the proposed acquisition of 74 *Winn-Dixie* supermarkets

in Texas and Oklahoma. The complaint, filed in the U.S. District Court for the Northern District of Texas, alleged that the acquisition would end 22 years of direct competition between the two supermarket chains in several markets in Texas, including metropolitan Fort Worth, Granbury, Weatherford, Brownwood, Henderson, Denton and Marshall. The parties abandoned the transaction before the start of the trial.

**Libbey, Inc.** (December 18, 2001): The Commission authorized staff to seek a preliminary injunction to block Libbey's proposed $332 million acquisition of *Anchor Hocking*, a subsidiary of Newell Rubbermaid, Inc., on grounds that the acquisition would substantially lessen competition in the market for soda-lime glassware sold to the food service industry in the United States. A complaint was filed in the U.S. District Court for the District of Columbia on January 14, 2002. The district court granted the Commission's request for an injunction on April 22, 2002. An administrative complaint, issued on May 9, extend the injunction until the conclusion of the administrative proceedings. Pursuant to the delegation of authority, the Commission withdrew the matter from adjudication on July 25, 2002, to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

***Meade Instruments Corporation*** (May 29, 2002): The Commission authorized staff to seek a temporary restraining order and a preliminary injunction to prevent Meade from acquiring any of the assets that could become available as a result of the pending bankruptcy proceedings in *Tasco Holdings, Inc.'s Celestron International*. According to the Commission, the purchase of the performance telescope assets would eliminate competition in that market and create a monopoly for the Schmidt-Cassegrain telescopes. Meade agreed not to submit any bid for Celestron or its assets.

***Nestlé Holdings, Inc.*** (March 4, 2003): The Commission authorized staff to seek a preliminary injunction to block the merger of Nestlé and *Dreyer's Grand Ice Cream, Inc.* on grounds that the merger would reduce competition in the highly concentrated market for superpremium ice cream. Nestlé markets superpremium ice cream under the Häagen Dazs brand; Dreyer's superpremium brands include Dreamery, Godiva and Starbucks. Before the complaint was filed in a federal district court, the parties agreed to enter into a consent agreement to settle the charges. The final order requires the divestiture of superpremium ice cream brands Dreamery and Godiva, the Whole Fruit sorbet brand, and Nestlé's distribution assets to CoolBrands International, Inc.

***Swedish Match AB*** (June 22, 2000): The Commission authorized staff to seek a preliminary injunction to block the proposed acquisition of *National Tobacco Company, L.P.* on grounds that the $165 million acquisition would lessen competition in the market for loose leaf chewing tobacco and that Swedish Match's market share would increase to 60 percent. On December 14, 2000, the U.S. District Court for the District of Columbia issued a 42-page opinion granting the Commission's motion for the injunction. On December 22, 2000, the parties abandoned the transaction.

***Vlasic Pickle Company*** (October 22, 2002): The Commission authorized staff to seek a

preliminary injunction to block the proposed acquisition of *Claussen Pickle Company* by Hicks, Muse, Tate & Furst Equity Fund V L.P., the owner of Vlasic Pickle Company on grounds that the transaction would combine the dominant firm in the market for refrigerated pickles (Claussen) with its most significant competitor in refrigerated pickles (Vlasic). Six days after the complaint was filed in federal district court, the parties abandoned the transaction.

## C. Commission Opinions/Initial Decisions

***Chicago Bridge & Iron Company*** (June 27, 2003): An administrative law judge upheld the complaint that challenged Chicago Bridge's acquisition of the Water Division and the Engineered Construction Division of Pitt-Des Moines, Inc. The initial decision requires Chicago Bridge to divest all of the assets acquired in the acquisition in order to restore competition in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. On December 2003, the Commission approved an interim consent order prohibiting Chicago Bridge & Iron from alter the assets acquired from Pitt-Des Moines, Inc. except "in the ordinary course of business." These assets include but are not limited to real property; personal property; equipment; inventories; and intellectual property. The initial decision was appealed and oral argument before the Commission occurred on November 12, 2003.

***Swedish Match AB*** (January 5, 2001): The Commission dismissed the administrative complaint after Swedish Match and *National Tobacco Company, L.P.* abandoned the transaction that would give Swedish Match control of 60 percent of the loose leaf chewing tobacco market.

***Tenet Healthcare Corporation*** (December 23, 1999): The Commission dismissed the administrative complaint that challenged the acquisition of *Doctors Regional Medical Center* in Poplar Bluff, Missouri after the United States Court of Appeals for the Eighth Circuit denied the Commission's petition for a rehearing en banc and denied the Commission's motion to stay the mandate in October 1999.

## *D. Court Decisions*

***H.J. Heinz Company*** (April 27, 2001): The U.S. District Court of Appeals for the District of Columbia reversed the federal district court decision and granted the Commission's request for entry of a preliminary injunction to enjoin Heinz's proposed acquisition of *Milnot Holding Company*, the owner of the Beech-Nut Nutrition Corporation. Within minutes of the Appeals Court decision, the parties abandoned the transaction.

***Swedish Match AB*** (August 5, 2002): The U.S. District Court for the District of Columbia

granted the agency's request for a preliminary injunction to block the proposed acquisition of the loose leaf chewing tobacco business of National Tobacco Company, L.P. The parties later abandoned the transaction.

## *E. Order Violations*

***Boston Scientific Corporation*** (March 31, 2003): A federal district judge ordered Boston Scientific Corporation to pay $7,040,000 in civil penalties to settle charges that it violated a 1995 consent order when it failed to provide *Hewlett-Packard Company* with a license to all of its intellectual property and technical information relating to intravascular ultrasound catheters. The complaint was filed on October 31, 2000 by the Department of Justice on behalf of the Commission. The trial was held in August 2002.

***RHI AG*** (February 19, 2004): RHI AG has agreed to pay a civil penalty of at least $650,000 to settle charges that it violated a 1999 consent order concerning its acquisition of Global Industrial Technologies, Inc. According to the complaint, RHI not only failed to divest the two refractories plants and other assets to Resco Products, Inc. but did not completely comply with other provisions required by the settlement agreement. The complaint, stipulation, and consent judgment will be filed in the United States District Court for the District of Columbia.

## *F. Other Commission Orders*

***H.J. Heinz Company*** (December 7, 2001): The Commission dismissed the Part III administrative complaint after Heinz abandoned its proposed merger with *Milnot Holding Company*, the owner of Beech-Nut Nutrition Corporation, that would combine the nation's second- and third- largest manufacturers of jarred baby food, respectively.

***Tenet Healthcare Corporation*** (December 23, 1999): The Commission decided not to continue with administrative litigation of the complaint that charged that the proposed merger of Tenet and *Doctors Regional Medical Center* would eliminate price, cost and quality competition and put consumers at risk of paying more for health care in Poplar Bluff, Missouri. The case was dismissed under the agency's 1995 policy to determine on a case-by-case basis whether to pursue administrative litigation in merger cases after a federal court has declined to bar the companies from merging pending the outcome of an administrative trial.

## *G. Administrative Complaints*

***Aspen Technology, Inc.*** (August 6, 2003): The Commission issued an administrative complaint that challenged Aspen's 2002 acquisition of *Hyprotech, Ltd.* alleging that the acquisition eliminated a significant competitor in the provision of process engineering simulation

software for industry. According to the complaint, the acquisition has led to reduced innovation competition in six specific process engineering simulation software markets. Trial is scheduled to commence May 26, 2004.

***Chicago Bridge & Iron Company N.V.*** (October 25, 2001): The Commission challenged the February 2001 purchase of the *Water Division and Engineered Construction Division* of Pitt-Des Moines, Inc. alleging that the acquisition significantly reduced competition in four separate markets involving the design and construction of various types of field-erected specialty industrial storage tanks in the United States. The administrative proceedings before an administrative law judge has been concluded. The initial decision filed June 27, 2003 upheld the complaint. Oral argument on the appeal of the initial decision occurred on November 12, 2003.

***Evanston Northwestern Healthcare Corporation*** (February 10, 2004): An administrative complaint alleges that following Evanston Northwestern Healthcare Corporations's acquisition of *Highland Park Hospital* prices charged to health insurers for medical services increased and therefore higher costs for health insurance were passed on to consumers of hospital services in the Cook and Lake counties of Illinois. The complaint also alleges that a physicians group affiliated with both hospitals, Highland Park Independent Physician Group, negotiated prices for physicians on staff at Evanston as well as for several hundred independent physicians not affiliated with either hospital. According to the complaint, these actions constitute illegal price fixing among competing physicians or physician groups and denies consumers the benefits of competition in physician services. A trial date has not yet been scheduled.

***H.J. Heinz Company*** (November 22, 2000): An administrative complaint charged that the proposed acquisition of *Milnot Holding Corporation*, owner of Beech-nut Nutrition Corporation, would substantially reduce competition in the manufacture and sale of jarred baby food in the United States. On November 1, 2000, the Commission sought an emergency stay from the Court of Appeals for the D.C. Circuit after the federal district court denied the Commission's request for a preliminary injunction. The Court of Appeals for the District of Columbia enjoined the transaction. The parties abandoned the proposed transaction and the administrative complaint was dismissed by the Commission.

**Libbey, Inc.** (May 9, 2002): An administrative complaint charged that the proposed acquisition of *Anchor Hocking*, a wholly-owned subsidiary of Newell Rubbermaid, Inc. would substantially reduce competition in the market for soda-lime glassware sold to the food service industry in the United States. The complaint was issued after the U.S. District Court in Washington, D.C. enjoined the acquisition pending administrative adjudication. The matter was withdrawn from adjudication on July 25, 2002 to consider a proposed consent agreement. A consent order was finalized October 7, 2002.

***MSC. Software Corporation*** (October 9, 2001): An administrative complaint challenged the 1999 acquisitions of *Universal Analytics, Inc.* and *Computerized Structural Analysis & Research Corp.* alleging that MSC., the dominant supplier of advanced computer-aided engineering

software known as "Nastran", acquired the other two suppliers in the market. According to the complaint, the acquisitions eliminated competition and tended to create a monopoly in the market. The complaint was settled by a consent agreement that became final on October 29, 2002.

***Swedish Match AG*** (December 21, 2000): An administrative complaint was issued after the United States Federal District Court for the District of Columbia granted the Commission's motion for a preliminary injunction to block Swedish Match North America from acquiring the loose leaf chewing tobacco brands of *National Tobacco Company*. The administrative complaint alleged that the acquisition would substantially reduce competition by combining the first and third sellers of loose leaf chewing tobacco in the United States. According to the complaint, if the acquisition were consummated, Swedish Match would gain a market share of 60 percent in U.S. sales. The Commission dismissed the administrative complaint after the parties abandoned the transaction.

## *H. Other*

***Best Practices Analysis for Merger Review Process*** (Announced March 15, 2002): The Commission conducted "brown bag" public workshops in Chicago, Los Angeles, New York, San Francisco, and Washington, DC during 2002 to solicit input from a broad range of interest groups who have participated in the Commission's or the Department of Justice's merger review process. The areas under consideration included:

- the initial waiting period under HSR;
- the content and scope of the second request;
- negotiation of modifications to the second request;
- special issues concerning electronic records and accounting of financial data.

Remedies issues included:

- the package of assets to be divested;
- the manner of a proposed divestiture;
- the proposed buyer of divested assets;
- the Buyer Up Front;
- the use of Fix-It-First;
- the use of Crown Jewel Provisions;
- third party rights;
- the risks to competition and to the parties.

Workshops held:

- Workshop on Accounting and Financial Data (July 10, 2002) Washington, DC
- General Session on Best Practices for Merger Investigations (June 27, 2002) Washington, DC
- General Session on Best Practices for Merger Investigations (June 25, 2002) Los Angeles, CA.

• General Session on Best Practices for Merger Investigations (June 12, 2002) Chicago, IL

• Electronic Records (June 5, 2002) Washington, DC

• General Session on Best Practices for Merger Investigations (June 5, 2002) San Francisco, CA

***Business-to-Business Electronic Marketplaces*** (Report Announced October 26, 2000): A staff report, *"Entering the 21st Century: Competition Policy in the World of B2B Electronic Marketplaces"* discusses information gathered and antitrust issues addressed at the public workshop in Washington, D.C. June 29 - 30, 2000. Business-to-Business (B2B) electronic marketplaces use the Internet to electronically connect businesses with each other, primarily for the purposes of buying and selling a wide variety of goods and services.

• Public Workshops held May 7 - 8, 2001 explored certain competition issues that arise in connection with B2B and business to consumer (B2C) e-commerce. The workshop continued the dialogue initiated at the June 2000 workshop.

***Clayton Act -- Section 8*** (Effective February 2004): Changes in two threshold figures, based on the change in the Gross National Product, define when it is unlawful for an individual to serve as an officer or director of two or more competing corporations: (1) each of the two companies has capital, surplus and undivided profits in excess of $20,090,000; and (2) the competitive sales of each corporation exceed $2,009,000.

***Guidelines for Merger Investigations***: The Guidelines represent the first outcome of the ***Best Practices Workshop*** which began March 2002. Available at www.ftc.opa/2002/12/mergerguides Primary components:

• Witnesses will be able to obtain investigational hearing transcripts.

• Documents will no longer have to be sorted or identified by specification.

• Second sweeps will be avoided whenever possible.

• In response to second requests, parties will be able to submit documents and other materials in an electronic format rather than in hard copy.

• Sample products are no longer required by Specification 5(a) of the Model Second Request.

***Horizontal Merger Investigation Data, Fiscal Years 1996 - 2003*** Staff analysis of horizontal investigations. The staff tabulated certain market structure information as it relates to the Commission's decision whether or not to seek relief in specific markets investigated. Released February 2004.

***Merger Efficiency Roundtable*** (December 9 - 10, 2002; Washington, DC): Experts in mergers and acquisitions from the academic, consulting, and business communities gave presentations on how to determine whether a proposed transaction is likely to generate merger efficiencies.

***Merger Enforcement Workshop*** (February 17 - 19, 2004) sponsored by the Federal Trade Commission and the Department of Justice. Topics discussed:

- Hypothetical Monopolist Test
- Concentration & Market Shares
- Monopsony
- Non-Price Competition/Innovation
- Unilateral Effects
- Coordinated Effects
- Uncommitted Entry
- Efficiencies/Dynamic Analysis/Integrated Analysis

***Merger Remedies - Second Workshop*** (October 23, 2002; New York, New York): Workshop, co-hosted by the Antitrust and Trade Regulation Committee of The Association of the Bar of the City of New York, was designed to gather information from a broad range of interested parties regarding consent order remedies in merger and acquisition matters.

# *II. Hart-Scott-Rodino Antitrust Improvements Act Enforcement*

## *A. Court Decisions*

***The Hearst Trust and The Hearst Corporation*** (October 11, 2001): Hearst and its subsidiary paid a $4 million civil penalty to settle charges that they failed to include required documents in the notification and report form file in 1998 for the proposed acquisition of Medi-Span International, Inc. The complaint alleged that the omitted documents hindered the antitrust agencies in their review and analysis of the proposed acquisition. The complaint, stipulation and final judgment were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the United States Attorney General. During fiscal year 2001, the Commission filed a related complaint for a permanent injunction alleging that Hearst and First DataBank created a monopoly through the acquisition of Medi-Span, First DataBank's only other competitor selling software and data detailing information for pharmaceutical prices, descriptions, dosages, and interactions. The Final Order and Stipulation requiring divestiture and disgorgement of profits was entered December 18, 2001.

## *B. Consent Orders*

None

## *C. Complaints (Complaints filed as part of a consent agreement not listed separately)*

None

## *D. Rules and Formal Interpretations*

***Hart-Scott Rodino Reform*** **(Amended Final Rules, Published March 12, 2002)**:

- Amendments to Parts 801 and 802 of the Premerger Notification Rules.
- Amendments to Section 802.21: Acquisitions of voting securities not meeting or exceeding greater notification threshold.

***Hart-Scott-Rodino Reform*** **(Effective February 1, 2001)**: Significant changes in the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

- The size of transaction threshold increases from $15 million to $50 million. The 15

percent size of transaction threshold is eliminated.

• Transactions valued at more than $200 million will be reportable without regard to "size of person". The current size of person test will continue to be in place for transactions valued at $200 million or less.

• All dollar thresholds will be adjusted each fiscal year, beginning with fiscal year 2005, to reflect changes in the gross national product during the previous year.

• A tiered fee structure replaces the standard $45,000 filing fee for all reportable transactions. Companies will now pay $45,000 for transactions valued at less than $100 million, $125,000 for transactions valued at $100 million to less than $500 million, and $280,000 for transactions valued at $500 million or more.

• The length of the waiting period that follows substantial compliance with a second request for additional information will become 30 days for most transactions (instead of 20 days under the current law).

• Whenever the end of any waiting period falls on a Saturday, Sunday or legal holiday, the official end of the waiting period will end on the next regular business day.

***Second Requests Procedures*** **(Effective April 5, 2000)**: Four new procedures and initiatives adopted to improve the handling of second request investigations issued by the Commission.

• Prior to issuance, all second requests will be reviewed by the senior management staff of the Bureau of Competition.

• Within five business days following the issuance of a second request the Bureau of competition and the parties in the proposed transaction will conference to discuss the competitive issues raised in the proposed acquisition.

• The Bureau of Competition staff will respond to party requests for modifications of the second requests within five business days.

• The parties will have recourse to the Commission's General Counsel for resolution of second request modification issues not resolved after discussion with staff.

***Limited Liability Companies – Formal Interpretation 15*** **(Effective March 1, 1999)**: Creation of an LLC which unites two or more independently-owned business under common control may be subject to the reporting requirements of the HSR Act, if the size thresholds of the HSR Act are met.

• Minor amendments announced **March 20, 2001**: The changes reflect the new $50 million filing threshold and the revision of a footnote to reflect the size-of-person test for transactions valued at more than $200 million.

## *E. Other*

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (August 18, 2000): Twenty-second Annual Report (Fiscal Year 1999).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (April 30, 2001): Twenty-third Annual Report (Fiscal Year 2000).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (September 27, 2002): Twenty-fourth Annual Report (Fiscal Year 2001).

Premerger Notification Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (August 1, 2003): Twenty-fourth Annual Report (Fiscal Year 2002).

# III. Non-Merger Enforcement

## *HORIZONTAL ENFORCEMENT*

### A. *Commission Opinions/Initial Decisions*

***Polygram Holding, Inc. (The Three Tenors)*** (July 24, 2003): The Commission upheld the ruling of an administrative law judge and prohibited PolyGram from entering into any agreement with competitors to fix the prices or restrict the advertising of products they have produced independently. The administrative complaint generally known as *The Three Tenors* and involving respondents PolyGram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation charged PolyGram with entering into an illegal price fixing agreement not to advertise or discount earlier albums and video recordings of concerts featuring the Three Tenors in an effort to promote the latest concert, thought to be less appealing to the public. The Commission ordered the respondents to cease and desist from entering into any combination, conspiracy, or agreement - with producers or sellers at wholesale of audio or video products - to "fix, raise, or stabilize prices or price levels" in connection with the sale in or into the United States of any audio or video product.

***Rambus, Inc.*** (February 17, 2004): An administrative law judge dismissed all charges against Rambus, Inc. ruling that Commission staff had failed to sustain their burden of proof with respect to all three violations alleged in the complaint. On March 1, 2004, complaint counsel filed a notice of appeal.

***Schering-Plough Corporation*** (December 8, 2003): The Commission reversed the administrative law judge's initial decision that had dismissed all charges of anticompetitive conduct. The Commission found that Schering-Plough Corporation entered agreements with Upsher-Smith Laboratories, Inc. and American Home Products to delay the entry of generic versions of Schering's branded K-Dur 20, a widely prescribed potassium chloride supplement. According to the opinion, the parties settled patent litigation with terms that included unconditional payments by Schering in return for agreements to defer introduction of the generic products. The Commission entered an order that would bar similar conduct in the future.

***Summit Technology and VISX*** (February 7, 2001): The Commission dismissed its complaint after the U.S. patent and Trademark Office issued a Reexamination Certificate of U.S. Patent No. 5,108,388. On June 4, 1999 an administrative law judge dismissed charges against VISX, a key developer of laser eye surgery equipment and technology, known as photo refractive keratectomy (PRK). According to the 1998 administrative complaint, VISX and Summit Technology, the only two firms legally able to market equipment for PRK, placed their competing patents in a patent pool and shared the proceeds each and every time a Summit or VISX laser was used. The administrative law judge also dismissed charges that VISX acquired a key patent by inequitable conduct and fraud on the U.S. Patent and Trademark Office, ruling that complaint counsel failed

to present evidence that an act of fraud was committed since information was not willfully withheld from the patent office. A final order settled the price fixing allegations in the 1998 complaint.

## B. Court Decisions

***California Dental Association*** (September 5, 2000): The Court of Appeals for the Ninth Circuit by a vote of 3-0 issued an opinion that the Commission failed to prove that the association of dentists in California engaged in anticompetitive advertising restrictions under the rule-of-reason analysis. The court vacated and remanded the complaint with instructions that the Commission dismiss the 1993 administrative complaint against the association. The administrative complaint was dismissed February 15, 2001.

## C. Authorizations to Seek Preliminary/Permanent Injunctions

None

## D. Consent Orders

***Abbott Laboratories*** and ***Geneva Pharmaceuticals, Inc.*** (Final Orders May 22, 2000): Abbott and *Geneva Pharmaceuticals* settled charges that the two firms entered into an illegal agreement to stop the marketing and development of a competing generic drug. According to the complaint, Abbott, the manufacturer of Hytrin – the brand name for terazosin HCL, a prescription drug used to treat hypertension and benign prostatic hyperplasia – entered into an agreement with Geneva Pharmaceuticals whereby Abbott would pay Geneva millions of dollars not to market a generic version of Hytrin. The orders bar Abbott and Geneva, among other things, from entering into agreements in which a generic company agrees with a manufacturer of a branded drug to delay or stop the production of a competing drug. This provision remains in effect for a period of ten years.

***Alaska Healthcare Network*** (Final Order April 25, 2001): An association of 86 physicians practicing in the Fairbanks, Alaska area settled charges that the Alaskan Healthcare Network illegally formulated a fee schedule based on its members' current prices for use in negotiations with third-party payers in an effort to obtain higher prices for medical services.

***American Home Products Corporation*** (Final Order April 5, 2002): A consent order settled charges that American Home Products entered into an anticompetitive agreement with Schering-Plough Corporation to delay the entry of a low-cost generic drug that would be in direct competition with a branded version developed and manufactured by Schering. According to the complaint issued with the consent, Schering illegally paid American Home millions of dollars to

delay the entry and sale of its generic version of Schering's K-Dur 20, a drug used to treat patients who suffer from insufficient levels of potassium, a condition that could lead to cardiac problems. The consent order, which expires in 10 years, prohibits American Home Products from entering into such agreements in the future. On December 8, 2003, the Commission issued an opinion that found that the agreements between Schering and Upsher-Smith and American Home Products violated the antitrust laws. The Commission entered an order for Schering and Upsher-Smith that is similar to the American Home Products order.

***American Institute for Conservation of Historic and Artistic Works*** (Final Order October 30, 2002): A consent order settled charges that the American Institute for Conservation of Historic and Artistic Works adopted and enforced provisions in its rules of conduct that prohibited professional conservators to work for free or at reduced fees. The association agreed to remove all provisions from its Code of Ethics, and its Commentaries to the Guidelines for Practice that are inconsistent with the order. Professional conservators manage and preserve cultural objects (including historical scientific, religious, archaeological and artistic objects).

***Anesthesia Service Medical Group, Inc. and Grossmont Anesthesia Services Medical Group*** (Final Order July 11, 2003): Two anesthesiologists groups settled charges that they entered into joint agreements to establish fees and services from Grossmont Medical Hospital in San Diego County. Specifically, the groups agreed on fees that both would demand from health care insurance companies and other third party payers for taking call for obstetrics and providing services to uninsured emergency room patients. Together, the two groups are composed of approximately 200 physicians that provide competing anesthesiology services in the San Diego area.

***Aurora Associated Primary Care Physicians, L.L.C.*** (Final Order July 19, 2002): A consent order settled charges that the organization of internists, pediatricians, family physicians and general practitioners in the Aurora, Colorado area engaged in boycotts and entered into collective negotiations with health care insurers in an effort to increase the costs of physician services. The order prohibits the organization from entering into any agreement with insurance payers or providers to negotiate fees on behalf of the physicians group.

***Bertelsmann Music Group, Inc.*** (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs (CD) at or above the minimum advertised price (MAP) set by distribution companies in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers' own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CDs increased. Beginning in 1997, distributors increased the wholesale prices for CDs, and those wholesale prices have continued to rise each year since. Bertelsmann and four other firms, *Universal Music and Video Distribution Corporation and UMG Recordings, Inc., Time-Warner Inc., EMI Music Distribution*, and *Sony Music Entertainment* represent approximately 85 percent of all CDs purchased in the United States.

***Biovail Corporation*** (Final Order October 2, 2002): The Commission charged Biovail Corporation with illegally acquiring an exclusive patent license for Tiazac, a pharmaceutical used to treat high blood pressure and chronic chest pain. The complaint further alleged that Biovail, in an effort to maintain its monopoly, wrongfully listed the acquired license in the U.S. Food and Drug Administration's "Orange Book" for the purpose of blocking generic competition to its branded Tiazac. The consent order requires Biovail to divest part of its exclusive rights to DOV; prohibits the firm from taking any action that would trigger additional statutory stays on final FDA approval of a generic form of Tiazac; and also prohibits Biovail from wrongfully listing any patents in the Orange Book for a product for which the company already has an New Drug Application from the FDA.

***Biovail Corporation and Elan Corporation*** (Final Order August 20, 2002): A consent order settled charges that Biovail and Elan Corporation entered into an agreement that contained substantial monetary incentives not to compete in the market for specified dosages of generic forms of Adalat CC, a drug used to treat hypertension. The final consent order requires the companies to terminate their agreement and prohibits them form entering into similar agreements in the future. This is the Commission's first enforcement action involving an allegedly anticompetitive agreement between two competing generic drug manufacturers.

***Bristol-Myers Squibb Company*** (Final Order April 14, 2003): Bristol-Myers Squibb Company (BMS) settled charges that it engaged in illegal business practices to delay the entry of three low price generic pharmaceuticals that would be in direct competition with three of its branded drugs. The complaint alleged that BMS purposely made wrongful listings in the Orange Book of the U.S. Food & Drug Administration and that it also paid a potential competitor over $70 million to delay the entry of its generic drug. The three drugs involved in the complaint are: *Taxol* (containing the active ingredient paclitaxel) – used to treat ovarian, breast, and lung cancers; *Platinol* (containing the active ingredient cisplatin) – used for the treatment of various forms of cancer; and *BuSpar* (containing the active ingredient buspirone) – used to manage anxiety disorders.

***Capitol Records, Inc. dba "EMI Music Distribution"*** (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CDs increased. Beginning in 1997, distributors increased the wholesale prices for CDs, and those wholesale prices have continued to rise each year since. *EMI Music Distribution*, and four other firms, *Bertlesmann, Universal Music and Video Distribution Corporation and UMG Recordings, Inc., Time-Warner Inc.*, and *Sony Music Entertainment* represent approximately 85 percent of all CDs purchased in the United States.

***Carlsbad Physician Association*** (Final Order June 13, 2003): A New Mexico physician

organization settled charges that it and its members entered into agreements to fix prices and to refuse to deal with third party payers and other health care plans except on collectively agreed-upon terms.

***Colegio de Cirujanos Dentistas de Puerto Rico*** (Final Order June 12, 2000): A dental association with a membership of more than 1800 dentists practicing in Puerto Rico agreed not to encourage its members to enter into agreements that set or fixed the fees charged or terms and conditions under which dentists would deal with health insurance plans or other payers in an attempt to obtain higher reimbursement rates for dental services.

***FMC Corporation and Asahi Chemical Industry Co. Ltd.*** (Final Order June 12, 2002): A consent order settled charges that FMC and Asahi Chemical Industry Co. Ltd. of Japan entered into a conspiracy to divide the world market for microcrystalline cellulose (MCC), a binder used in making pharmaceutical tablets, into two territories. According to the complaint, FMC allegedly agreed not to sell the pharmaceutical to customers in Japan or East Asia without Asahi Chemical's consent, while Asahi Chemical agreed not to sell the pharmaceutical to customers in North America or Europe without the consent of FMC. The final order prohibits such behavior in the future and restricts FMC from acting as the U.S. distributor for any competing manufacturer of microcrystalline cellulose (including Asahi Chemical) for 10 years. In addition, for five years, FMC is prohibited from distributing in the United States any other product manufactured by Asahi Chemical.

***Geneva Pharmaceuticals*** (Final Order May 22, 2000): Refer to discussion under Abbott Laboratories.

***Hoechst Marion Roussel (renamed Aventis as a result of the merger between Hoechst AG and Rhone-Poulenc S.A.)*** (Final Order April 2, 2001): A consent order settled allegations in an administrative complaint that charged that Hoechst agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Hoechst's branded Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina. The consent order prohibits the companies from entering into agreements designed to restrict the entry of generic competitors in an attempt to monopolize relevant markets .

***Indiana Household Movers and Warehousemen, Inc.*** (Final Order April 25, 2003): The corporation of household goods movers in Indiana settled charges that it filed collective intrastate rate tariffs with the State's Department of Revenue on behalf of its members. According to the complaint issued with the consent order, these collective filings reduced competition for household goods moving services within the state.

***Institute of Store Planners*** (Final Order May 27, 2003): Under the terms of a final consent order, The Institute of Store Planners is required to remove from its Code of Ethics any provision that prohibits its members from providing their services for free and any provision that prohibits competition with other members for work on the basis of price. Its members provide

architectural store design and store and merchandise planning to retail stores.

***Iowa Movers and Warehousemen's Association*** (Final Order September 10, 2003): The Iowa Movers and Warehousemen's Association settled allegations that it filed collectively established tariffs for intrastate moving rates in Iowa - a practice which did not meet the requirements of the state action doctrine. Under the state action doctrine, some practices of private firms are protected against scrutiny by the federal antitrust laws.

***Maine Health Alliance*** (Final Order August 27, 2003): A network of doctors, hospitals, and its executive director, William R. Diggins, settled charges that they illegally engaged in price-fixing activities that raised health care costs in five Maine counties by negotiating jointly with third-party payers in a effort to obtain higher compensation and more advantageous contract terms for its members.

***Memorial Hermann Health Network Providers*** (Final Order January 18, 2004): Memorial Hermann Health Network Providers settled charges that it negotiated fees and other services for medical care provided by its member physicians in the Houston, Texas area in an effort to obtain higher fees and more advantageous terms. According to the complaint these alleged price fixing practices increased costs for consumer, employers, and health plans.

***Michael T. Berkley, D.C. and Mark A. Cassellius, D.C.*** (Final Order April 11, 2000): A consent order settled charges that Drs. Michael T. Berkley and Mark A. Cassellius conspired to fix prices for chiropractic services and to boycott the Gundersen Lutheran Health Plan in an attempt to obtain higher reimbursement for chiropractic services in the La Crosse, Wisconsin area.

***Minnesota Transport Services Association*** (Final Order September 15, 2003): A consent order settled charges that the household goods movers association filed collectively established rate tariffs for its members in Minnesota, conduct that was not protected by the state action doctrine. Under a state action doctrine, some private companies may be protected from the federal antitrust laws if the state authority regulates and regularly reviews the operations and practices of the companies.

***National Academy of Arbitrators*** (Final Order January 13, 2003): The National Academy of Arbitrators is prohibited from adopting policies that restrict its members from advertising truthful information about their services, including prices and conditions of services, under terms of a consent order. The association is required to remove all provisions that do not conform to the provisions in the consent order from: (1) its Code of Professional Responsibility for Arbitrators of Labor-Management Disputes; (2) its Formal Advisory Opinions; (3) any Statements of Policy; and (4) its Web site.

***New Hampshire Motor Transport Association*** (Final Order December 4, 2003): The New Hampshire Motor Transport Association settled charges that it filed tariffs containing rules that

called for automatic increases in intrastate rates. In addition, the organization agreed to void its collectively filed tariffs current in effect in New Hampshire.

***Nine West Group Inc.*** (Final Order April 11, 2000): Nine West Group Inc. settled charges that it entered into agreements with retailers; coerced other retailers into fixing the retail prices for their shoes; and restricted periods when retailers could promote sales at reduced prices. The order prohibits Nine West from fixing the price at which dealers may advertise, promote or sell any product. Nine West is one of the country's largest suppliers of women's shoes.

***Obstetrics & Gynecology Medical Corporation of Napa Valley*** (Final Order May 14, 2002): A doctors' group consisting of nearly every obstetrician and gynecologist with active medical staff privileges at the two general acute care hospitals in Napa County, California settled charges that they restrained price and other competition by engaging in illegal agreements to fix fees and other terms of dealing with health care insurance plans. According to the complaint issued with the consent order, the doctors refused to deal with the third party payers except on collectively determined terms. The consent order not only prevents the doctors from engaging in similar practices in the future but also requires the dissolution of the group.

***Physician Network Consulting, L.L.C.*** (Final Order August 27, 2003): The Physician Network Consulting, L.L.C. of Baton Rouge Louisiana; Michael J. Taylor; Professional Orthopedic Services, Inc; The Bone and Joint Clinic of Baton Rouge, Inc.; Baton Rouge Orthopaedic Clinic, L.L.C.; and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. settled charges that they entered into agreements to fix prices and other terms on which they would deal with United HealthCare of Louisiana, Inc., a health insurance company. Physician Network Consulting is an agent for Professional Orthopedic Services' members.

***Professional Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia A. Brauchler*** (Final Order July 19, 2002): A consent order settled charges that a Denver, Colorado physician organization and its members, its president, Dr. M. J. Guese, and its non-physician consultant, M. A. Brauchler, increased fees for services through collective boycotts and agreements in a effort to fix the prices they would receive from health care insurance payers. The order prohibits the organization and its members and other respondents from entering into any agreement with insurance payers or providers to negotiate on behalf of the physicians group.

***Professionals in Women's Care*** (Final Order October 2, 2002): Eight Denver, Colorado physician groups specializing in obstetrics and gynecology and their non-physician agent settled allegations that the practice group and other physicians entered into collective contracts in an effort to increase prices and terms of services when dealing with health insurance firms and other third-party payers. The consent order prohibits the following respondents from entering into such agreements in the future: R.T. Welter and Associates, Inc.; R. Todd Welter; Consultants in Obstetrics and Gynecology, P.C.; Mid Town Obstetrics & Gynecology, P.C.; Mile High OG/GYN Associates, P.C.; The OB-GYN, P.C.; The Women's Health Group, P.C.; Cohen and Womack, M.D., P.C.; and Westside Women's Care, L.L.P.

***Sony Music Entertainment*** (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy, the retail prices of CDs increased. Beginning in 1997, distributors increased the wholesale prices for CDs, and those wholesale prices have continued to rise each year since. Sony Music Entertainment and four other firms, *Bertelsmann, Universal Music and Video Distribution Corporation and UMG Recordings, Inc., Time-Warner Inc.,* and *EMI Music Distribution*, represent approximately 85 percent of all CDs purchased in the United States.

***Southern Valley Pool Association*** (Final Order November 1, 1999): A consent order prohibits fourteen Bakersfield, California pool construction contractors from entering into any agreement or conspiracy to substantially raise and set swimming pool construction prices. The order also prohibits the contractors from refusing to deal with owner-builders or home construction contractors or developers.

***South Georgia Health Partners, L.L.C.*** (Final Order October 31, 2003): A Georgia physician-hospital organization and its other associated physician groups settled charges that they entered into agreements to fix physician and hospital prices and refused to deal with insurance companies, except on collectively agreed-upon terms.

***SPA Health Organization dba Southwest Physician Associates*** (Final Order July 17, 2003): A physician group in the Dallas/Fort Worth, Texas area settled charges that it collectively bargained on behalf of its members to negotiate fee schedules with third party payers and other health insurance companies. According to the complaint, issued with the consent order, these practices decreased competition and increased prices for the provision of medical services to area consumers.

***Surgical Specialists of Yakima*** (Final Order November 11, 2003): The Surgical Specialists of Yakima, Cascade Surgical Partners, Inc., P.S. and Yakima Surgical Associates, P.S. settled charges that they jointly entered into agreements for their members to fix prices and terms for the provision of medical services when dealing with health care insurers.

***System Health Providers*** (Final Order August 20, 2002): System Health Providers and its parent corporation, Genesis Physicians Group, Inc., settled charges that they collectively bargained with health insurance firms to accept proposed fee schedules; discouraged members from entering into contracts directly with payers; and refused to deal with health insurance firms and other third-party payers except on collectively agreed upon terms. The order prohibits the recurrence of the alleged practices and actions.

***Tenet Healthcare Corporation*** (Final Order January 29, 2004): A consent order prohibits

Frye Regional Medical Center, Inc., an acute care hospital in Hickory, North Carolina, and its parent company Tenet Healthcare Corporation from entering into any agreement to negotiate fees on behalf of any physician practicing in four North Carolina counties and from refusing to deal with insurance companies and other payers. Also refer to related administrative complaint issued to Piedmont Health Alliance. This settlement is the first case in which the Commission has named a hospital as a participant in an alleged physician price-fixing conspiracy.

***Texas Surgeons, P.A.*** (Final Order May 18, 2000): General surgeons and six competing general surgery practice groups in the Austin, Texas area settled charges that they collectively refused to deal with two health plans, forcing the plans to accept the surgeons' demands to raise surgical rates.

***Time Warner, Inc.*** (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CDs increased. Beginning in 1997, distributors increased the wholesale prices for CDs, and those wholesale prices have continued to rise each year since. Time-Warner Inc. and four other firms, *Bertelsmann, Universal Music and Video Distribution Corporation and UMG Recordings, Inc., EMI Music Distribution*, and *Sony Music Entertainment* represent approximately 85 percent of all CDs purchased in the United States.

***Universal Music and Video Distribution Corporation and UMG Recordings, Inc.*** (Final Order September 6, 2000): Five distributors of recorded music illegally required retailers to advertise compact discs at or above the minimum advertised price (MAP) set by the distribution company in exchange for substantial advertising payments for various types of media including television, radio, newspaper and signs and banners within the retailers own stores. According to the complaint, large music retailers would lose millions of dollars if they refused to follow the MAP policies. As a result of this policy the retail prices of CDs increased. Beginning in 1997, distributors increased the wholesale prices for CDs, and those wholesale prices have continued to rise each year since. Universal Music and Video Distribution and four other firms, *Bertelsmann,, Time-Warner Inc., EMI Music Distribution*, and *Sony Music Entertainment* represent approximately 85 percent of all CDs purchased in the United States.

***Warner Communications Inc.*** (Final Order September 17, 2001): Warner Communications, Inc. and Vivendi Universal S.A. settled charges that they entered into agreements to fix prices and restrict advertising. According to the complaint issued with the consent order, the two firms formed a joint venture to distribute compact discs, cassettes, videocassettes of the public performances of the *Three Tenors*. The venturers agreed not to advertise or discount the 1990 and 1994 concerts of the *Three Tenors* in an effort to restrict competition with the recordings of the1998 concert recording. The 1998 concert was thought to be less appealing and not as popular

as the earlier performances. The consent order prohibits the firms from restraining competition by entering into agreements fix prices or restrict advertising in the future.

***Washington University Physician Network*** (Final Order August 22, 2003): A consent order prohibits a St. Louis, Missouri physicians' organization from negotiating with third party payers on behalf of its member physicians and from refusing to deal with health insurance companies.

***Wisconsin Chiropractic Association*** (Final Order May 18, 2000): The Wisconsin Chiropractic Association and its executive director, Russell A. Leonard, settled charges that they conspired to fix the prices for chiropractic goods and services and to boycott third party payers in an attempt to obtain higher reimbursement rates for services and contracts in the La Crosse, Wisconsin area.

## E. *Administrative Complaints*

***Alabama Trucking Association, Inc.*** (July 8, 2003): An administrative complaint charged that the association of household goods movers engaged in the collective filing of tariffs on behalf of its members who compete in the provision of moving services in the state of Alabama. Under terms of a final consent order, Alabama Trucking Association, Inc. agreed to stop filing tariffs containing collective intrastate rates and to void collectively filed tariffs currently in effect in Alabama.

***California Pacific Medical Group dba Brown and Toland Medical Group*** (July 8, 2003): An administrative complaint charged a San Francisco, California physicians' organization with engaging in an agreement under which its competing members agreed collectively on the price and other terms on which they would enter into contracts with health plans or other third party payers. The complaint also alleged that Brown and Toland directed its physicians to end their preexisting contracts with payers and required its physician members to charge specified prices in all Preferred Provider Organization contracts. A proposed consent agreement accepted for comment in February 2003, prohibits Brown and Toland from negotiating with payers on behalf of physicians, refusing to deal with payers, and setting terms for physicians to deal with payers, unless the physicians are clinically or financially integrated.

***Hoechst Marion Roussel*** (March 16, 2000): An administrative complaint charged that Hoechst Marion Roussel (renamed *Aventis* as a result of the merger between Hoechst AG and Rhone-Poulenc S.A.), the manufacturer of Cardizem CD, a once-a-day diltiazem drug product used in the treatment of hypertension and angina, agreed to pay Andrx Corporation millions of dollars not to market and distribute a generic version of Cardizem CD. According to the complaint, Hoechst and Andrx conspired to create a monopoly in the market for diltiazem. A consent order entered May 11, 2001 settled the charges.

***Kentucky Household Goods Carriers Association, Inc.*** (July 8, 2003): An administrative complaint charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Kentucky. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny.

***Movers Conference of Mississippi, Inc.*** (July 8, 2003): An administrative complaint charged that the association composed of competing household goods movers filed collective rates for intrastate moving services in the state of Mississippi. According to the complaint, these activities were not protected under the state action doctrine and are not immune from federal antitrust scrutiny. Under terms of a final consent order, the Movers Conference agreed to stop filing tariffs containing collective intrastate rates.

***North Texas Specialty Physicians*** (September 16, 2003): An administrative complaint charged that the corporation of 600 physicians negotiated the price and other terms of medical services that its participating physicians would accept in contracting with third party payers. According to the complaint, the exchange of prospective price information among otherwise competing physicians reduced competition and enabled the physicians to achieve supra-competitive prices.

***Piedmont Health Alliance, Inc.*** (December 22, 2003): An administrative complaint charged Piedmont Health Alliance, Inc. with collectively setting prices it demanded for physician services with third party payers. According to the complaint, the physician-hospital organization entered into signed agreements on behalf of its member physicians to participate in all contracts negotiated and to accept the negotiated physician fees. The complaint further alleges that these practices eliminated price competition among physicians in the North Carolina counties of Alexander, Burke, Caldwell and Catawba. The complaint also names ten individual physicians who participated in the alleged price fixing services. Also refer to settlement entered with Tenet Healthcare Corporation (Frye Regional Medical Center, Inc.).

***Polygram Holding, Inc. (The Three Tenors)*** (July 30, 2001): An administrative complaint charged that the Warner and PolyGram Music Group joint venture agreed not to discount or advertise the 1990 and 1994 *Three Tenors* albums and videos in an attempt to promote the 1998 Three Tenors concert. The complaint further alleged that the parties to the venture, formed to distribute compact discs, cassettes and video cassettes, was concerned that the 1998 performance would not be as well received as the earlier recordings. An initial decision upheld the complaint. The Commission issued an opinion that affirmed the initial decision.

***Schering - Plough Corporation*** (March 30, 2001): The complaint alleged that Schering - Plough, the manufacturer of K-Dur 20 - a prescribed potassium chloride, used to treat patients with low blood potassium levels - entered into anticompetitive agreements with *Upsher-Smith Laboratories* and *American Home Products Corporation* to delay their generic versions of the K-Dur 20 drug from entering the market. According to the charges, Schering-Plough paid Upsher-

Smith $60 million and paid American Home $15 million to keep the low-cost generic version of the drug off the market. The charges against American Home were settled by a consent agreement. An initial decision filed July 2, 2002 dismissed all charges against Schering - Plough and Upsher-Smith Laboratories. A Commission opinion found that the agreements violated the Federal Trade Commission Act.

***South Carolina State Board of Dentistry*** (September 12, 2003): An administrative alleged that the South Carolina State Board of Dentistry prevented dental hygienists from providing dental care and services on-site to children in South Carolina schools. According to the complaint, the Board passed regulation that required the children to have a dentist examine the children before they would be eligible for the school dental program. The complaint further alleged that this provision decreased competition in the delivery of preventive dental services to school-aged children. The Commission heard oral argument in January 2004 on a motion to dismiss.

## F. *Other*

**Public Documents/Policy Statements/Conferences**

***Policy Statement on Monetary Equitable Remedies in Competition Cases*** (July 25, 2003): The Commission issued a policy statement that identified three factors that will be considered in determining whether the Commission will seek disgorgement or restitution in competition cases. First, the Commission will ordinarily seek monetary relief when the underlying violation is clear. Second, there must be a reasonable basis for calculating the amount of remedial payment. Third, the Commission will consider the value of seeking monetary relief in light of other remedies available in the matter including private actions and criminal proceedings.

***FTC Antitrust Actions in Pharmaceutical Services and Products*** (November 8, 2002): Summary of health care antitrust matters involving the pharmaceutical industry and enforcement policy prepared by the FTC Health Care Services and Products Division Staff.

***Second Public Conference on the U.S. Oil and Gasoline Industry*** (May 2002): From May 6 - 9, 2002, the Commission held a second public conference to examine factors that affect prices of refined petroleum products in the United States. The goal of the conference was to solicit information and views on the major factors affecting the prices of refined petroleum products, along with the relative importance of such factors.

***Refined Petroleum Products in the United States*** (Public Conference August 2, 2001): A public conference was held to examine factors that affect prices of refined petroleum prices in the United States. The participants included consumer groups, industry participants, and independent experts - parties that can focus on domestic and international aspects of gasoline

industry.

***Midwest Gas Price Investigation*** (March 30, 2001): The final Commission Report found that there was no evidence of collusion or other anticompetitive conduct by the oil industry to cause gasoline price spikes during the spring and summer of 2000. The nine-month investigation identified several key factors that contributed to the price increases: refinery production problems; errors in estimating the potential for supply shortages in the Midwest.

## Commission Studies/Guidelines

***Pharmaceutical Agreement Notification Filing Requirements*** (Effective January 7, 2004): Agreements between Brand-name and generic pharmaceutical companies regarding the manufacture, marketing, and sale of generic versions of brand-name drug products are required to be filed with the Commission and the Department of Justice, pursuant to Section 1112 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

***Slotting Allowances in the Retail Grocery Industry: Selected Case Studies of Slotting Allowances in Five Product Categories*** (November 14, 2003): Slotting allowances paid to certain retailers in certain geographic areas for five product categories: fresh bread, hot dogs, ice cream and frozen novelties, shelf-stable pasta, and shelf-stable salad dressing.

***To Promote Innovation: The Proper Balance of Competition and Patent Law and Policy***, A Report by the Federal Trade Commission (October 2003): The report is the first of two reports about how to maintain that balance. The report concludes that questionable patents are a significant competitive concern and can harm innovation. The report makes recommendation to reduce the number of questionable patents that are issued and upheld.

***Report of the State Action Task Force: Recommendations to Clarify and Reaffirm the Original Purposes of the State Action Doctrine to Help Ensure that Robust Competition Continues to Protect Consumers*** (September 23, 2003): The staff report concludes that the scope of the antitrust state action doctrine has expanded dramatically since its articulation by the Supreme Court. The report recommends clarifications of the doctrine, including more rigorous application of the "clear articulation" and "active supervision" requirements.

***Possible Anticompetitive Barriers to E-Commerce: Wine*** (July 3, 2003): Staff report concludes that e-commerce offers consumers lower prices and more choices in the wine market. Report concludes that state bans on interstate direct shipping imposes the largest regulatory barrier to expanded e-commerce in wine.

***Generic Drug Entry Prior to Patent Expiration: An FTC Study*** (Released July 30, 2002): The Commission recommends changes to the Hatch-Waxman Amendments to permit only one

automatic 30-month stay per drug product, per generic entry application, and to resolve infringement disputes over patents listed in the "Orange Book" prior to the filing of a generic's entry application. By limiting the availability of 30-month stays to one per drug product, per generic application, the report concludes that generic entry by other firms would be facilitated. In addition, the Commission supports S.754, The Drug Competition Act, to require brand-name companies and first generic applicants to provide copies of certain agreements to the Federal Trade Commission and the Department of Justice.

***Antitrust Guidelines for Collaborations Among Competitors, Issued by the Federal Trade Commission and the United States Department of Justice*** (April 2000): Guidelines explain how the Agencies analyze certain antitrust issues raised by collaborations among competitors. Also included are separate statements by Commissioner Thompson and Commissioner Leary.

## Advisory Opinions

***Dunlap Memorial Hospital in Orville, Ohio***. Staff concluded that Dunlap's provision of pharmaceuticals to the Viola Startzman Free Clinic falls within the scope of the Non-Profit Institutions Act. (January 9, 2004)

***Medical Group Management Association:*** Letter from Jeffrey W. Brennan to Gerald Niederman. An association of medical practice administrators requested an opinion concerning its proposal to conduct and publish the results of a survey of physician practices. (November 3, 2003)

***Partlinx LLC.*** Staff advised that Commission does not presently intend to recommend law enforcement action in connection with Partlinx's proposed e-commerce joint venture. (October 10, 2003)

***Bay Area Preferred Physicians***. The Bureau advised that it does not presently intend to recommend an enforcement action if Bay Area Preferred Physicians establishes a physician network to create new contracting opportunities between physicians and health plans and other third-party payers. (September 23, 2003)

***Valley Baptist Medical Center.*** Sale of pharmaceuticals to contracted workers who provide services at VBMC. (March 18, 2003)

***Arkansas Children's Hospital.*** Sale of pharmaceuticals to patients seen in clinics that are located on ACH's campus but are operated by the University of Arkansas for Medical Sciences. (March 18, 2003)

***PriMed Physicians*** : Proposal by physician group to create with other Dayton, Ohio area

physicians an advocacy group to undertake "a campaign to inform and educate the general public" of policies and procedures by third party payers in Dayton. (February 6, 2003)

***Joint FTC and DOJ letter urging Council of the North Carolina State Bar to approve a proposed opinion that would explicitly permit non-lawyers to compete with lawyers to perform real estate closings***. (July 11, 2002)

***MedSouth, Inc.*** A multi-specialty physician practice association in Denver, Colorado intends to operate a nonexclusive physician network joint venture. (February 21, 2002)

***Connecticut Hospital Association*** The applicability of the Non-Profit Institutions Act to sales of pharmaceuticals by its member hospitals to their retired employees.(December 20, 2001)

***Harvard Vanguard Medical Associates, Inc.*** Sale of pharmaceuticals by non-profit, multi-specialty medical clinic to employees and to patients treated at the clinic. (December 18, 2001)

***Northeast Pharmacy Service Corporation*** Network of independent pharmacies in Massachusetts and Connecticut offering a package of medication-related patient care service. (July 27, 2000):

***BJC Health System*** Sale of pharmaceuticals by non-profit hospital system to the system's employees, affiliated managed care program enrollees, and home care subsidiary. (November 9, 1999):

## Advocacy Filings

***Comments of Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Kansas State Senator Les Donovan regarding Bill No. 2330 which would bar the "below-cost" sale of motor fuel. (March 16, 2004)

***Comments of the Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics, and the Office of Policy Planning. Comments to the Speaker Pro Tempore of the Alabama State House of Representatives Concerning the Alabama Motor fuels Marketing Act. (January 29, 2004)

***Joint Comments of the Federal Trade Commission and the Department of Justice*** on a draft of the proposed amendment to the Indiana Supreme Court Admissions & Discipline Rule regarding Unauthorized Practice of Law to the Indiana State Bar Association. (October 10, 2003)

***Comments of the Staff of the Federal Trade Commission*** Bureau of Competition, Bureau of Economics, and the Office of Policy Planning. Analysis of Wisconsin's Unfair Sales Act:

Letter to Wisconsin State Representative Shirley Krug. (October 1, 2003)

***Comments to th Federal Energy Regulatory Commission*** regarding proposed revisions to market-based tariffs and authorization. (August 28, 2003)

***Letter sent to New York Attorney Eliot Spitzer.*** Comments of the Office of Policy and Planning and the Bureau of Competition stated that there is a significant risk that the Motor Fuel Marketing Practices Act could harm consumers by reducing competition in the sale of motor fuels. (July 24, 2003)

***Application for Approval of Asset transfer Agreements with Affiliated Company, Ameren Union Electric Company.*** Comments to the Illinois Commerce Commission regarding the transfer of generation assets from an unregulated affiliated to its regulated parent utility. (June 18, 2003)

***Proposed Amendments to the North Carolina Motor Fuel Marketing Act.*** Comments of the Federal Trade Commission's Bureau of Competition, Bureau of Economics, and the Office of Planning. Letter to Senator Daniel G. Clodfelter, Chairman of the Judiciary I Committee, stating that the proposed amendments to the state's Motor Fuel Marketing Act are not only unnecessary, but have significant potential to harm consumers by causing them to pay more at the pump. (May 21, 2003)

***Standards for Determining Whether Natural Gas Prices are Constrained by Market Forces.*** Comments to the Georgia Public Service Commission regarding proposed standards to determine whether market forces constrain retail prices for natural gas. (April 24, 2003)

***The Potential Effect of Tenet Healthcare Corporation's Proposed Purchase of Slidell Memorial Hospital.*** Letter from Bureau of Competition, Bureau of Economics and the Office of Policy Planning to Louisiana Attorney General, The Honorable Richard P. Ieyoub, opposing the proposed acquisition by Tenet Health Care Systems of the Slidell Memorial Hospital. According to the letter, the proposed acquisition would eliminate competition and probably give Tenet the opportunity to increase prices unilaterally following the acquisition. (April 1, 2003)

***Real Estate Closing Activities.*** The Commission and the Department of Justice Joint letter to the Rhode Island House of Representatives on Proposed Bills H.5936 and H.5639: Proposed Restrictions on Competition from Non-Attorneys. The agencies expressed concerns that the bills would eliminate competition between non-lawyers and lawyers in the closing of real estate deals in Rhode Island by requiring a lawyer to close almost all real estate closings. (April 1, 2003)

***Competition and the Effects of Price Controls in Hawaii's Gasoline Market*** (January 28, 2003)

*Competition and the Effects of Price Controls in Hawaii's Gasoline Market* (January 28, 2003)

*In the Matter of Application for FDA Approval to Market a New Drug; Patent Listing Requirements; Comments of the FTC Before the HHS and FDA* (December 23, 2002)

*FTC/DOJ Comments on the American Bar Association's Proposed Model Definition of the Practice of Law* (December 20, 2002)

*Ohio House Bill 325 - Physician Collective Bargaining* (October 16, 2002)

*Bill No.S04522 (New York Motor Fuel Marketing Practices Act); /Bill No. A06942 (An Act to Amend the General Business Law, in Relation to the Operation of Retail Service Stations)* (August 8, 2002)

*Proposed North Carolina State Bar Opinions Concerning Non-Attorneys' Involvement in Real Estate Transactions* (July 11, 2002)

*Proposed Bill H.7462, Restricting Competition from Non-Attorneys in Real Estate Closing Activities* (March 29, 2002)

*The Threat of Consumer Harm Resulting from Physician Collective Bargaining Under Alaska Senate Bill 37* (March 22, 2002)

*Virginia Senate Bill No. 458, "Below-Cost sales of Motor Fuels"* (February 15, 2002)

*Washington House Bill 2360, Physician Antitrust Immunity* (February 8, 2002)

*Alaska Senate Bill 37, Physician Antitrust Immunity* (January 18, 2002)

*North Carolina State Bar Opinions Restricting Involvement of Non-Attorney in Real Estate Closings and Refinancing Transactions* (December 14, 2002)

*Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform* (July 20, 2002)

*Arkansas Public Service Commission: Market Power Analysis* (April 14, 2000)

*FDA: Citizen Petitions* (March 2, 2000)

*Response to Chairman Bliley: Electricity Competition and Reliability Act* (January 14,

2000)

*FDA: 180-Day Marketing Exclusivity for Generic Drugs* (November 4, 1999)

***District of Columbia City Counsel - Letter to D.C. City Counsel on Bill to Permit Physicians to Collectively Bargain with Health Plans*** (October 29, 1999)

## *Workshops/Hearings*

### Healthcare

***Hearings on Healthcare and Competition Law and Policy*** sponsored by the Commission and the Department of Justice. September 24 - 26; and 30; October 1, 2003, Washington, DC.

- Physician Product and Market Definition
- Physician Information Sharing
- Physician IPAs - Patterns and Patterns of Integration - Messenger Model
- Physician Unionization; Group Purchasing Organizations
- International Perspectives on Health Care and Competition Law and Policy
- Medicare and Medicaid
- Remedies: Civil/Criminal

***Hearings on Healthcare and Competition Law and Policy*** sponsored by the Commission and the Department of Justice. June 25 - 26, 2003, Washington, DC.

- Mandated Benefits
- Pharmaceutical: Formulary Issues
- Prospective Guidance

***Hearings on Healthcare and Competition Law and Policy*** sponsored by the Commission and the Department of Justice. May 27; 29; and 30 and June 10 - 12, 2003, Washington, DC.

- Quality and Consumer Information - Hospitals
- Physicians
- Market Entry
- Long Term Care/Assisted Living Facilities
- Noerr-Pennington/State Action
- Financing Design/Consumer Information Issues

***Hearings on Healthcare and Competition Law and Policy*** sponsored by the Commission and the Department of Justice. April 21 - 23; May 7 - 8, 2003, Washington, DC.

- Health Insurance Monopoly - Market Definition. Competitive Effects
- Health Insurance Monopoly - Entry and Efficiencies
- Health Insurance Monopsony - Market Definition - Competitive Effects
- Health Insurance/Providers: Countervailing Market Power - Most Favored Nation Clauses
- Physician Hospital Organizations
- Qualify and Consumer Information - Overview

***Hearings on Healthcare and Competition Law and Policy*** sponsored by the Commission and the Department of Justice. March 26 - 28, 2003, Washington, DC.

- Round table discussion on hospital-related issues and an examination of product and geographic markets for hospitals
- Issues in litigating hospital mergers

***Hearings on Healthcare and Competition Law and Policy*** sponsored by the Commission and the Department of Justice. February 26 - 28, 2003, Washington, DC. Examined the state of the healthcare market place and the role of competition, antitrust, and consumer protection in satisfying citizens' preferences for high-quality, cost-effective healthcare.

***Healthcare Impact of Competition Law & Policy on the Cost, Quality and Availability of Healthcare and the Incentives for Innovation in the Field. September 9 - 10, 2002 Workshop, Washington, DC.***

## Intellectual Property and Patent Law

***Intellectual Property Law and Policy - Roundtable Discussion*** (October 25, 2002)

• Competition, Economic, and Business Perspectives on Patent Quality and Institutional Issues: Competitive Concerns, Prior Art, Post-Grant Review, and Litigation

• Competition, Economic, and Business Perspectives on Substantive Patent Law Issues: Non-Obviousness and Other Patentability Criteria

• Antitrust Law and Patent Landscapes

• Standard Setting Organizations: Evaluating the Anticompetitive Risks of Negotiating Intellectual Property Terms and Conditions Before a Standard is Set

• Relationships Between Competitors and Incentives to Compete: Cross Licensing of Patent Portfolios, Grantbacks, Reach-Through royalties, and Non-Assertion Clauses
www.ftc.gov/opp/intellect/index

***Antitrust and Intellectual Property Law and Policy***

• Patent Pool and Cross-Licensing: When Do They Promote or Harm Competition? (April 17, 2002)

• Standard-Setting Practices: Competition, Innovation and Consumer Welfare to Deal? (April 18, 2002)

• The Strategic Use of Licensing: Is There Cause for Concern about Unilateral Refusals to Deal? (May 1, 2002)

• Patent Settlements: Efficiencies and Competitive Concerns (May 2, 2002)

• Antitrust Analysis of Licensing Practices (May 14, 2002)

• An International Comparative Law Perspective on the Relationship Between

• Competition and Intellectual Property, Parts I and II (May 22 - 23, 2002)

***Competition and Intellectual Property Policy***

• Cross-Industry Perspectives on Patents (April 9, 2002)

• Substantive Standards of Patentability (April 10, 2002)

• Patenting Procedures, Presumptions, and Uncertainties (April 10, 2002)

• Patentable Subject Matter - Business Method and Software Patents (April 11, 2002)

• Patent Criteria and Procedures - International Comparisons (April 11, 2002)

***Hearings to Focus on the Implications of Competition and Patent Law and Policy***

• Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy (February 6, 2002)

• Patent Law for Antitrust Lawyers (February 8, 2002)

• Antitrust Law for Patent Lawyers (February 8, 2002)

• Economic perspectives on Intellectual Property; Competition and Innovation (February 20, 2002)

• Business and Economic Perspectives on Real-World Experiences with Patents (February 25 - 28, 2002)

• Business and Other Perspectives on Real-World Experiences with Patents (March 19 - 20, 2002)

## Other

***Anticompetitive Efforts to Restrict Competition on the Internet*** - (October 8 - 10, 2002 Washington, DC): Public workshop explored possible anticompetitive efforts to restrict competition on the Internet.

***Federal Circuit Jurisprudence: Jurisdiction, Choice of Law, and Competition Policy Perspectives*** (July 11, 2002)

***Slotting Allowances*** (May 31; June 1, 2000): Commission held two public workshops on "Slotting Allowances" – lump sum and up-front payments that food manufacturers pay to get new products placed on supermarket shelves. The workshop provided manufacturers, retailers and other interested persons who have had actual-hands on experience with grocery marketing practices with a forum to discuss the nature of slotting allowances to assess whether they raise competitive concerns.

• ***Report on Slotting Allowances and Other Grocery Marketing Practices*** (February 20, 2001): Staff report on information gathered and antitrust issues addressed at the public workshops held in 2000. Commission staff recommended that the agency gather basic data on current grocery marketing practices and continue to pursue anticompetitive conduct on a case-by-case basis. In addition, staff recommended that the agency refrain from issuing slotting allowance guidelines.

## *VERTICAL ENFORCEMENT*

### *A. Commission Opinions/Initial Decisions*

***Toys "R" Us*** (Commission Decision November 1, 2000 - Final Order; Initial Decision September 30, 1997): An Administrative Law Judge issued an initial decision that, if made final, would prohibit Toys "R" Us from entering into agreements with toy manufacturers and others that result in restrictions on sales to warehouse clubs. TRU threatened to stop buying products that were sold to warehouse clubs, which resulted in major toy makers halting the sale of certain products to clubs. The ALJ found that these practices reduced competition and led to higher toy prices. The initial decision would prohibit the toy chain from entering into any agreement with a supplier to restrict sales to any toy discounter; from facilitating agreements among suppliers that would limit sales to any retailer; and for five years, from refusing to or announcing it will refuse to purchase from a supplier because the supplier sells to a toy discounter. On October 14, 1998 the Commission issued its decision that Toys "R" Us had orchestrated horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs. On December 7, 1998, Toys "R" Us filed a notice of appeal in the U.S. District Court for the Seventh Circuit. In August 200, the Commission's complaint was upheld by Seventh Circuit Court of Appeals.

### *B. Court Decisions*

***Toys "R" Us*** (August 1, 2000): The United States Court of Appeals for the Seventh Circuit unanimously affirmed the 1998 Commission decision. The Court found that the nation's largest toy retailer engaged in horizontal and vertical agreements with and among toy manufacturers to restrict the availability of popular toys to warehouse clubs.

### *C. Authorization to Seek Preliminary/Permanent Injunctions*

***Mylan Laboratories, Inc.*** (December 22, 1998): Complaint filed in the U.S. District Court for the District of Columbia charged Mylan with restraint of trade, monopolization and conspiracy to monopolize the market for two generic drugs used to treat anxiety, lorazepam and clorazepate, through exclusive dealing arrangements. The complaint seeks consumer redress of at least $120 million and to enjoin the alleged illegal exclusive licensing agreements. Federal District Court Judge Hogan released a 46 page decision upholding the Commission's authority to seek restitution in antitrust injunction actions under Section 13(b) of the Federal Trade Commission Act. November 29, 2000: Commission approved a $100 million settlement—the largest monetary settlement in Commission history. The opinion settled Commission concerns that Mylan, Gyma Laboratories of America, Inc., Cambrex Corporation and Profarmaco S.R.L. conspired to deny Mylan's competitors ingredients necessary to manufacture lorazepam and clorazepate. On April 27, 2001, the U.S. District Court for the District of Columbia granted

preliminary approval to a plan of distribution to injured consumers who paid the increased prices and state agencies, including Medicaid programs, that purchased the drugs while the illegal agreements were in effect. The court granted final approval of the settlement February 1, 2002. The funds were distributed by the states.

## *D. Consent Orders*

***McCormick & Company*** (Final Order April 27, 2000): McCormick & Company agreed to settle charges that it violated the Robinson-Patman Act when the firm charged some retailers higher net prices for its spice and seasoning products than it charged other retailers. According to the complaint, McCormick, the world's largest spice company, offered its products to some retailers at substantial discounts using a variety of different discounting schemes, such as slotting allowances, free goods, off-invoice discounts and cash rebates. The order prohibits McCormick from engaging in price discrimination and from selling its products to any purchaser at a net price higher than McCormick charged the purchaser's competitor.

## *E. Administrative Complaints*

None

## *F. Other*

None

## *SINGLE FIRM ENFORCEMENT*

### A. *Commission Opinions/Initial Decisions*

***Union Oil of California*** (November 25, 2003): An administrative law judge dismissed a complaint in its entirety against Union Oil of California that charged the company with committing fraud in connection with regulatory proceedings before the California Air Resources Board regarding the development of reformulated gasoline. The judge ruled much of Unocal's conduct was permissible activity under the *Noerr-Pennington* doctrine and that the resolution of the issues outlined in the complaint would require an in depth analysis of patent law which he believed were not with the jurisdiction of the Commission. Complaint counsel filed an appeal of the decision. An oral argument was held on March 10, 2004.

### B. *Administrative Complaints*

***Rambus, Inc.*** (June 19, 2002): An administrative complaint charged that between 1991 and 1996, Rambus joined and participated in the JEDEC Solid State Technology Association (JEDEC), the leading standard-setting industry for computer memory. According to the complaint, JEDEC rules require members to disclose the existence of all patents and patent applications that relate to JEDEC's standard-setting work. While a member of JEDEC, Rambus observed standard-setting work involving technologies which Rambus believed were or could be covered by its patent applications, but failed to disclose this to JEDEC. In 1999 and 2000, after JEDEC had adopted industry-wide standards incorporating te technologies at issue and the industry had become locked in to the use of those technologies, Rambus sought to enforce its patents against companies producing JEDEC-compliant memory, and in fact has collected substantial royalties from several producers of DRAM (dynamic random access memory). An initial decision dismissed the charges. An appeal has been filed.

***Union Oil Company of California*** (March 4, 2003): An administrative complaint charged that Union Oil Company of California (Unocal) made misleading statements concerning its emissions results for the production of "summer-time" gasoline mandated by the California Air Resources Board (CARB) for use March through October. According to the complaint, Unocal lead producers of the CARB gasoline to believe that its research was non-proprietary and in the public interest, while at the same time it failed to disclose that it had patent pending claims on the research results with the U.S. Patent and Trademark Office. As a result of the patent being allowed, Unocal is now in a position to enforce its patent rights – requiring companies that produce the "summer-time" CARB gasoline to pay substantial royalties to Unocal if they use the patented technology. An initial decision dismissing the complaint was filed on February 17, 2004. The initial decision has been appealed to the Commission.

# IV. *International Activities*

The Bureau of Competition is involved in a variety of international activities that are increasingly critical to the achievement of the agency's missions. The FTC has built a strong network of cooperative relationships with counterpart agencies abroad, and plays a lead role in key multilateral fora. The FTC actively assists competition agencies in new market-based economies in developing competition laws, agencies, and enforcement tools and policies. The FTC works increasingly with other nations to protect American consumers who can be harmed by both anticompetitive conduct perpetrated beyond our borders, and to foster convergence toward best practices.

### *Cooperation in Enforcement and Policy Development*

Cooperation with competition agencies of other jurisdictions is a key component of an effective enforcement program. The FTC has broadened and deepened its cooperation with agencies around the world on individual cases and on policy issues. The FTC's relationships with counterparts in the European Union, Canada, and other jurisdictions remain vital as our staffs continue to work together closely on investigations of mutual interest, including the following matters during the past year:

- **Pfizer/Pharmacia.** The resolution of the competition concerns raised by Pfizer's $60 billion acquisition of Pharmacia involved close coordination between the FTC and the European Commission on two of the eight affected markets in which the FTC obtained remedial measures. The FTC also **coordinated** various antitrust aspects of the transaction with competition authorities in Australia, Canada, Mexico, and South Africa.

- **DSM/Roche.** DSM's proposed $2 billion acquisition of Roche Vitamins and Fine Chemicals Division presented potential anticompetitive effects in the market for a critical enzyme in certain cattle feed. The remedy ultimately achieved by the FTC and the EC required the unwinding of a joint venture as well as assurances that the remaining venture partner would be capable of maintaining competition. The case presented critical policy issues regarding remedies, on which the U.S. agencies and the EC have coordinated.

- **GE/Agfa.** The successful resolution of this merger investigation involved cooperation with the competition authorities of Ireland, Germany, and the EC. The cooperation demonstrated the value of the contacts that have developed among the agencies that enable them to respond quickly to multi-jurisdictional mergers. The parties reached settlements with the FTC and the EC that were announced within two weeks of each other and within the time frame sought by the parties.

The FTC and its counterpart agencies seek to streamline cooperation in merger cases, and remain committed to addressing and minimizing policy divergences in all areas. These efforts are exemplified by the "best practices" that the EC and the U.S. agencies issued in 2002 that institutionalize and make more transparent the means by which the agencies can review mergers subject to review in both jurisdictions. During the past year, the U.S. agencies provided input into EC proceedings regarding merger policy and intellectual property regulations, the Japan Fair Trade Commission's proposed reform of rules relating to the treatment of "essential facilities," and proposed amendments to the Canadian Competition Act. The U.S. agencies have, similarly, benefitted from input from their foreign counterparts on policy reviews in the U.S.

### *Multilateral Competition Cooperation*

The FTC participates actively in various multilateral competition fora that further international cooperation and convergence.

**ICN.** The International Competition Network, which has 86 member competition agencies from 76 jurisdictions, provides a venue for antitrust officials worldwide to achieve consensus on proposals for procedural and substantive convergence on best practices in antitrust enforcement and policy. In June 2003, the ICN hosted its second annual conference, highlighting its work on multi-jurisdictional merger review, competition advocacy, and capacity building. Based on recommendations of the Merger Working Group's Subgroup on Notification and Procedures, which the FTC chairs, the ICN adopted a set of seven Recommended Practices on Merger Notification Procedures, which complement the eight Guiding Principles for Merger Notification and Review adopted the previous year. In preparation for the ICN's April 2004 annual conference, the Mergers Working Group has prepared new recommended practices on conduct of merger investigations, procedural fairness, confidentiality, and interagency coordination, and is preparing a manual on recommended techniques for merger investigations .

The ICN's Competition Advocacy Working group developed an online information and resource center, prepared a compilation of advocacy provisions, conducted sectoral studies of advocacy, and assembled a "tool kit" of competition advocacy mechanisms; its work is continuing in the Capacity Building and Competition Policy Implementation Working Group. The Capacity Building group also prepared a report on the challenges developing countries face in implementing competition policies, and one of its subgroups, which the FTC co-chairs, is conducting a study on the types of technical assistance that work best in particular circumstances, examining ways to build broader support for competition policy, and examining the relationship between technical assistance funding agencies and their counterpart competition agencies. The working group on Antitrust Enforcement in Regulated Sectors, created in 2003, has subgroups compiling reports on the viability of antitrust law in regulated sectors, antitrust enforcement initiatives in regulated industries, and the manner in which antitrust authorities and regulators exercise authority in areas of overlap.

**OECD.** The OECD Competition Committee is an important forum for competition officials from developed countries to share experiences and promote best practices. During the past year, the FTC has participated actively in the OECD's continuing work on, *inter alia,* merger process convergence, regulatory reform, and examining the issues at the intersection of trade and competition policy. The FTC was a leader in the OECD's first joint roundtable on competition and consumer protection, in which the synergies between the two disciplines in promoting consumer welfare were explored. The OECD also hosted a Global Forum on Competition involving OECD members and representatives of approximately thirty non-members.

### *Trade/Competition Fora*

Trade agreements increasingly involve competition issues. The FTC co-chairs the U.S. delegation to the World Trade Organization Working Group on the Interaction between Trade and Competition Policy, which examined issues relating to the role of competition policy in the WTO. FTC staff participated in the WTO Ministerial Conference in Cancun. The FTC has been working with other U.S. agencies and the other nations of the hemisphere to develop competition provisions for a Free Trade Agreement of the Americas. The FTC also participated in the U.S. delegation that negotiated the competition chapter of proposed Free Trade Agreement with Australia.

### *International Technical Assistance*

For over a decade, the FTC has assisted transition economies that have made the commitment to market and commercial law reforms. With funding principally from the U.S. Agency for International Development (USAID), and in partnership with DOJ, over 40 nations have received technical assistance with the development of their competition laws. In this past year, the technical assistance program was active in Southeast Europe, Eurasia (i.e., Russia and other components of the former Soviet Union), the Andean Community, Egypt, Indonesia, Mexico, and South Africa. The FTC maintains a resident advisor program in Indonesia and, with DOJ, continues its resident advisor program in South Africa. The FTC's short-term programs have emphasized the development of investigative skills. These programs rely on a combination of resident advisors, regional workshops, and targeted short-term missions. The agency schedules these technical assistance activities to enable career FTC staff to share their expertise with their counterparts in the newer competition agencies of the world. In the past year, the FTC received funding to begin new programs of assistance to the ASEAN community of ten nations in Southeast Asia.

## *V. Competition Speeches*

**"Unilateral Merger Effects & Economic Models"** (March 3, 2004) Luke M. Froeb, Director, Bureau of Economics, The 2004 Antitrust Conference: Antitrust Issues in Today's Economy, New York, New York.

**"Diagnosing Physician-Hospital Organizations"** (January 22, 2004) Susan A. Creighton, Director, Bureau of Competition, American Health Lawyers Association, Program on Legal Issues Affecting Academic Medical Centers and Other Teaching Institutions, Washington, DC.

**"Competition Policy and Regulatory Reform: Means and Ends, How Should Competition Policy Transform Itself?"** (November 20, 2003) Todd J. Zywicki, Director, Office of Policy Planning, Competition Policy Research Center, Fair Trade Commission of Japan, Inaugural Symposium.

**"A Regulator's Perspective on Protecting Consumers and Competitive Marketplaces: Developments at the FTC"** (November 7, 2003) Orson Swindle, Commissioner, American Bar Association, Section of Administrative Law and Regulatory Practice, 2003 Administrative Law Conference, Washington, DC.

**'The Role of Expert Economic Testimony in Antitrust Litigation"** (November 2003) Luke M. Loeb, Director, Bureau of Economics, Committee on Antitrust and Trade Regulation of the Association of the Bar of the City of New York.

**"State Intervention/State Action - A U.S. Perspective"** (October 24, 2003) Timothy J. Muris, Chairman, Fordham Annual Conference on International Antitrust Law & Policy, New York, New York.

***"A Federal-State Partnership on Competition Policy: State Attorneys General as Advocates"*** (October 1, 2003), National Association of Attorneys General, 2003, Antitrust Seminar, Washington, DC.

***"Antitrust in Healthcare: A Keynote Address"*** (May 15, 2003) Thomas B. Leary, Commissioner, Written version of May 15, 2003 speech given at forum on Antitrust and Healthcare, Health Lawyers Association and the ABA Sections on Antitrust Law and Health, Washington, DC.

**"How History Informs Practice - Understanding the Development of Modern U. S. Competition Policy** (November 19, 2003) Timothy J. Muris, Chairman, American Bar Association's Fall Forum, National Press Club, Washington, DC.

**"Advertising and Unfair Competition: FTC Enforcement"** (March 21, 2003) Thomas

B. Leary, Commissioner, 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

**"Vertical issues: The Federal View"** (March 20, 2003) Thomas B. Leary, Commissioner, 18th Annual Advanced ALI-ABA Product Distribution and Marketing Course of Study Program, Orlando, Florida.

**"Discussion of Generic Drug Study"** (January 29, 2003) Michael S. Wroblewski, Assistant General Counsel for Policy Studies, Office of General Counsel, Generic Pharmaceutical Association Annual Meeting, Rio Grande, Puerto Rico.

**"Improving the Transitional Process: Key Issues and Recommendations"** (January 21, 2003) Mozelle W. Thompson, Commissioner, American Antitrust Institute's 3rd Annual Energy Roundtable Workshop "Getting From Here to There: Transitional Competition Issues in U.S. Electric Industry Restructuring", National Rural Electric Cooperative Association, Arlington, Virginia.

**American Bar Association Antitrust Section Mid Winter Meeting** (January 20, 2003) Timothy J. Muris, Chairman, Participant, Puerto Rico.

**"Industrial Organization and Antitrust Enforcement: Will Modern Industrial Organization Move Out of the Classroom and into the Courthouse?"** (January 15, 2003) William E. Kovacic, General Counsel, Office of General Counsel, Panel Discussion, George Mason University Winter 2003 Antitrust Symposium, Washington, DC.

**"Coordinated Interaction: Is There a Need For More Vigor?"** (January 15, 2003) Mary Coleman, Deputy Director for Antitrust, Bureau of Economics, George Mason University Winter 2003 Antitrust Symposium; and Timothy J. Muris, Chairman; Keynote Address, Washington, DC.

**Organization for Economic Co-operation and Development Global Business Forum on E-commerce: ICT's Untapped Resources and Opportunities for Continued Growth** (January 13, 2003) Mozelle W. Thompson, Commissioner, Participant, Waikiki, Hawaii.

**Institute of Public Utilities' 34th Annual Regulatory Policy Conference** (December 10, 2002) Thomas B. Leary, Commissioner, Keynote Speaker, Tampa, Florida.

**"Antitrust Implications Under Hatch-Waxman"** (December 6, 2002) Thomas B. Leary, Commissioner, Food and Drug Law Institute Hatch-Waxman Update Conference, Washington, DC.

**"Competition"** (October 30, 2002) Thomas B. Leary, Commissioner, International Chamber of Commerce, Department of Policy and Business Practices, ICC Commission, New York, New

York.

**"The Federal Trade Commission Perspective"** (October 31, 2002) Timothy J. Muris, Chairman, Fordham Corporate Law Institute's International Antitrust Policy Forum, New York, New York.

**2002 Global Business Dialogue on Electronic Commerce** (October 28, 2002) Mozelle W. Thompson, Commissioner, Participant, Annual Meeting, Brussels, Belgium.

**American Bar Associations Antitrust Masters Course** (October 25, 2002) Thomas B. Leary, Commissioner, Remarks, Sea Island, Georgia.

**"Current Developments in EC & US Antitrust Law"** (October 10, 2002) Thomas B. Leary, Commissioner, European Law Research Center at Harvard Law School, Cambridge, Massachusetts.

**"Generic Drugs"** (October 9, 2002) Timothy J. Muris, Chairman, Testimony before the Subcommittee on Health, Committee on Energy and Commerce, Rayburn House Office Building, Washington, DC.

**Anticompetitive Efforts to Restrict Competition on the Internet Workshop** (October 8, 2002) Timothy J. Muris, Chairman, Opening Remarks. Comments by Thomas B. Leary, Commissioner. October 10, 2002 Session, Opening Remarks by Sheila F. Anthony, Commissioner; and Concluding Remarks by Ted Cruz, Director, Office of Policy Planning, Washington, DC.

**"Oversight of Enforcement of the Antitrust Laws"** (September 19, 2002) Timothy J. Muris, Chairman, Testimony before the U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition, and Business and Consumer Rights, Dirksen Senate Office Building, Washington, DC.

**Dallas Bar Association Antitrust Section** (July 30, 2002) Timothy J. Muris, Chairman, Luncheon Speaker, Dallas, Texas

**European Foreign Affairs Review** (July 23, 2002) Timothy J. Muris, Chairman, Speaker, Brussels, Belgium.

**"New Directions in Antitrust Enforcement"** (July 4, 2002) Thomas B. Leary, Commissioner, National Economic Research Associates 22nd Annual Antitrust and Trade Regulation Seminar, Santa Fe, New Mexico.

**Computer & Communications Industry Association 2002 Washington Caucus** (June

24, 2002) Mozelle W. Thompson, Commissioner, Featured Speaker, Washington, DC.

**Eurelectric CEO Meeting: Merger Acquisitions, Competition Policy** (June 24, 2002) Thomas B. Leary, Commissioner, Keynote Speaker, Conference on World-wide Energy Liberalism, Leipzig, Germany.

**National Energy Marketers Association's Annual Membership Meeting and National Restructuring Conference** (June 21, 2002) Mozelle W. Thompson, Commissioner, Keynote Speaker, Washington, DC.

**Factors Affecting Prices of Refined Petroleum Products** - Public Conference (May 8, 2002) Timothy J. Muris, Chairman, Opening Remarks, Washington, DC.

**Research Workshop and Conference on Marketing and Antitrust Competition Policy**, University of Notre Dame, Mendoza School of Business (May 3, 2002) Thomas B. Leary, Commissioner, Keynote Luncheon Speaker, South Bend, Indiana.

**ABA 2002 Annual Antitrust Spring Meeting** (April 26, 2002) Timothy J. Muris, Chairman, Participant in Roundtable Discussion, Washington, DC.

**"E-Commerce"** (April 25, 2002) Mozelle W. Thompson, Commissioner, 1st Annual eOne Global Beyond Payments Conference, Napa Valley, California.

**"Crises and Transitions: Is Competition Policy Responsive to Market Power Issues in Restructuring Energy Markets?"** (April 25, 2002) Thomas B. Leary, Commissioner, ABA 2002 Annual Antitrust Spring Meeting, Washington, DC.

**"The Future of Leadership In a Competitive Environment"** (April 24, 2002) Mozelle W. Thompson, Commissioner, Panel Discussion before the American Bar Association Antitrust Section's Women & Minority Leadership Planning Group Task Force, Washington, DC.

**"Domestic Gasoline Markets"** (April 23, 2002) William Kovacic, General Counsel, General Counsel, Testimony before the House Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs, Rayburn House Office Building, Washington, DC.

**"Generic Pharmaceutical Marketplace Access"** (April 23, 2002) Timothy J. Muris, Chairman, Testimony before the Senate Committee on Commerce, Science, and Transportation, Senate Russell Office Building, Washington, DC.

**Center for Health Law Studies and the St. Louis University Law Journal**. (April 12, 2002) Thomas B. Leary, Commissioner. 14th Annual Health Law Symposium, Keynote Speaker, St Louis, Missouri.

**New York State Bar Association Antitrust Law Section Executive Committee Meeting** (March 30, 2002) Mozelle W. Thompson, Commissioner, Speaker, New York, New York.

**Baltimore Academies Business Professionals Breakfast.** (March 13, 2002) Orson Swindle, Commissioner, Discussion of Consumer Protection and Competition Issues, Pikesville, Maryland.

**The Conference Board's 2002 Antitrust Conference.** (March 7, 2002) Timothy J. Muris, Chairman, Panelist during the General Session, New York, New York.

**"New Trends in Antitrust Oversight of Mergers"** (March 7, 2002) Thomas B. Leary, Commissioner, Conference Board 2002 Antitrust Conference, New York, New York.

**"Perspectives from the FTC: Remarks on the Enforcement Agenda"** (March 1, 2002) Thomas B. Leary, Commissioner, Antitrust in Deer Valley: New Challenges/Cutting Edge Solutions, ABA Section of Antitrust Conference, Park City, Utah.

**"The Essential Stability of Merger Policy in the United States"** (January 17, 2002) Thomas B. Leary, Commissioner, Guidelines for Merger Remedies: Prospects and Principles, Joint U.S./E.U. Conference, University of California at Berkeley School of Law, Berkeley Center for Law & Technology, and Ecole Nationale Superieure des Mines de Paris, Paris, France.

**"Merger Enforcement in a World of Multiple Arbiters"** (December 4, 2001) Timothy J. Muris, Chairman, Brookings Institution, Roundtable of Trade and Investment Policy, Washington, DC.

**"Three Hard Cases and Controversies: The FTC Looks at Baby Foods, Colas and Cakes"** (December 4, 2001) Thomas B. Leary, Commissioner, Association of the Bar of the City of New York's Milton Handler Annual Antitrust Review, New York, New York.

**"Competition and Intellectual Property Policy: The Way Ahead"** (November 15, 2001) Timothy J. Muris, Chairman, American Bar Association, Antitrust Section Fall Forum, Washington, DC.

**"A Comment on Merger Enforcement in the United States and in the European Union"** (October 11, 2001) Thomas B. Leary, Commissioner, Transatlantic Business Dialogue Principals Meeting, Washington, DC.

**"Antitrust Issues in the Settlement of Pharmaceutical Patent Disputes, Part II"** (May 17, 2001 and for publication in the December 2001 edition of the *Journal of Health Law*), Thomas B. Leary, Commissioner, American Bar Association Antitrust Healthcare Program,

Washington, DC.

**"Antitrust Enforcement at the Federal Trade Commission: In a Word – Continuity"** (August 7, 2001) Timothy J. Muris, Chairman, American Bar Association, Antitrust Section Annual Meeting, Chicago, Illinois.

**"The Need for Objective and Predictable Standards in the Law of Predation"** May 10, 2001) Thomas B. Leary, Commissioner, Steptoe & Johnson and Analysis Group/Economics 2001, Antitrust Conference, Washington, DC.

**"The Patent-Antitrust Interface"** (May 3, 2001) Thomas B. Leary, Commissioner, American Bar Association's Section of Antitrust Law Program, "Intellectual Property and Antitrust: Navigating the Minefield," Philadelphia, Pennsylvania.

**"Between Competition and Cooperation–Changing Business-to-Business"** (April 4, 2001) Orson Swindle, Commissioner, The 8th World Business Dialogue, University of Cologne, Cologne, Germany.

**"Antitrust Economics: Three Cheers and Two Challenges"** (November 15, 2000) Thomas B. Leary, Commissioner. Paper based on talks given at a conference sponsored by Charles River Associates, and July 7, 2001 at the meeting of the Western Economic Association.

**"Antitrust Issues in Settlement of Pharmaceutical Patent Disputes"** (November 3, 2000) Thomas B. Leary, Commissioner, Sixth Annual Health Care Antitrust Forum, Northwestern University School of Law, Chicago, Illinois.

**"Antitrust in the Emerging B2B Marketplace"** (July 19, 2000) Orson Swindle, Commissioner, Forum for Trust in Online Trade, Princeton Club, New York, New York.

# *VI. Statistics*

## Fiscal Year 2004 (through March 15, 2004)

**Part III Administrative Complaints**

***Mergers and Joint Ventures - 1***
Evanston Northwestern Healthcare Corporation/Highland Park Hospital

***Nonmergers - 1***
Piedmont Health Alliance

**Part II Consent Agreements Accepted for Comment**

***Mergers and Joint Ventures - 2***
GenCorp Inc./Atlantic Research Corporation
General Electric Company/Agfa-Gevaert N.V.

***Nonmergers - 3***
New Hampshire Motor Transport Association
Memorial Hermann Health Network Providers
Tenet Healthcare Corporation

**Civil Penalty Actions Filed**
***None***

**Preliminary Injunctions Authorized**

***Mergers and Joint Ventures - 0***

***Merger Transactions Abandoned - 2***

***Total Merger and Nonmerger Enforcement***
***(October 1, 2003- March 15, 2004) - 9***

# Fiscal Year 2003

## Part III Administrative Complaints

*Mergers and Joint Ventures - 1*
Aspen Technology, Inc./Hyprotech, Ltd.

*Nonmergers - 7*
Alabama Trucking Association, Inc.
California Pacific Medical Group dba Brown and Toland Medical Group
Kentucky Household Goods Carriers Association, Inc.
Movers Conference of Mississippi, Inc.
North Texas Specialty Physicians
South Carolina State Board of Dentistry
Union Oil Company of California

## Part II Consent Agreements Accepted for Comment

*Mergers and Joint Ventures - 7*
Baxter International Inc./Wyeth Corporation
Dainippon Inc. and Chemicals, Inc./Bayer Corporation
DSM N.V./Roche Holding AG
Pfizer Inc./Pharmacia Corporation
Quest Diagnostics Inc./Unilab Corporation
Southern Union Company/Panhandle Pipeline from CMS Energy Corporation
Wal-Mart Stores, Inc./Supermercados Amigo, Inc.

*Nonmergers - 16*
Anesthesia Service Medical Group, Inc.
Bristol-Myers Squibb Company (BuSpar)
Bristol-Myers Squibb Company (Platinol)
Bristol-Myers Squibb Company (Taxol)
Carlsbad Physician Association
Indiana Household Movers and Warehousemen, Inc.
Institute of Store Planners
Iowa Movers and Warehousemen's Association
Maine Health Alliance, The
Minnesota Transport Services Association
National Academy of Arbitrators
Physician Network Consulting, et al.
South Georgia Health Partners, L.L.C.
SPA Health Organization dba Southwest Physician Associates

## Fiscal Year 2003
*(continued)*

**Part II Consent Agreements Accepted for Comment** *(Continued)*
Surgical Specialists of Yakima
Washington University Physicians Network

**Civil Penalty Actions Filed**
***None***

**Preliminary Injunctions Authorized**

***Mergers and Joint Ventures - 3***
Kroger Company (Raley's Supermarkets)
Nestle Holdings, Inc./Dreyer's Grand Ice Cream
Vlasic Pickle Company (Claussen Pickle Company)

**Merger Transactions Abandoned - *10***

## Total Merger and Nonmerger Enforcement - *44*

# Fiscal Year 2002

## Part III Administrative Complaints

*Mergers and Joint Ventures - 2*
Chicago Bridge & Iron Company N.V./Water Division and Engineered Construction Division of Pitt-Des Moines, Inc.
Libby Inc. and Anchor Hocking *(Note: Preliminary Injunction Authorized during fiscal year - case counted under PI's Authorized)*
MSC. Software Corporation/Universal Analytics, Inc. and Computerized Structural Analysis and Research Corp.

*Nonmergers - 1*
Rambus, Inc.

## Part II Consent Agreements Accepted for Comment

*Mergers and Joint Ventures - 10*
Airgas, Inc./Puritan Bennett Medical Gas Business from Mallinckrodt, Inc.
Amgen Inc./Immunex Corp
Bayer AG/Aventis CropScience Holdings S.A.
INA-Holding Schaeffler KG and FAG Kugelfischer Georg Schaefer AG
Koninklijke Ahold NV/Bruno's Supermarkets, Inc.
Nestle Holdings, Inc./Ralston Purina Company
Phillips Petroleum/Conoco
Shell Oil Company/Pennzoil-Quaker State Company
Solvay S.A./Ausimont S.p.A.
Valero Energy Corporation/Ultramar Diamond Shamrock Corporation

*Nonmergers - 8*
American Institute for Conservation of Historic and Artistic Works
Aurora Associated Primary Care Physicians
Biovail Corporation
Biovail Corporation and Elan Corporation
Obstetrics & Gynecology Medical Corporation of Napa Valley
Professional Integrated Services of Denver
Professional's in Women's Care
System Health Providers

## Fiscal Year 2002
*(Continued)*

**Civil Penalty Actions Filed**

***Premerger Notification - 1***
First Data Bank/Medi Span

**Preliminary Injunctions Authorized**

***Mergers and Joint Ventures - 5***
Deutsche Gelatine-Fabriken Stoess AG/Leiner Davis Gelatin Corporation and Goodman Fielder USA, Inc.
Diageo plc/Pernod Ricard S.A.
Libby, Inc./Anchor Hocking
Meade Instruments/Tasco Holdings
Cytyc Corporation/Digene Corporation

***Merger Transactions Abandoned - 7***
***(HSR and Non-HSR matters)***

## Total Merger and Nonmerger Enforcement - *34*
## (includes 1 civil penalty action)

# Fiscal Year 2001

**Part III Administrative Complaints**

***Mergers and Joint Ventures - 0***
H.J. Heinz Company/Milnot Holding Corporation, owner of Beech-Nut Nutrition Corporation
Swedish Match AB/National Tobacco Company, L.P.
*Note: Preliminary injunctions authorized during fiscal 2000 for each transaction.*

***Nonmergers - 2***
Schering-Plough Corporation, Upsher-Smith Laboratories and American Home Products Corporation (American Home Products consent)
Polygram Holding, Inc.; Decca Music Group Limited; UMG Recordings Inc.; and Universal Music & Video Distribution Corporation, subs of Vivendi Universal S.A.; and Warner Communications, Inc. (consent agreement accepted for comment)

**Part II Consent Agreements Accepted for Comment**

***Mergers and Joint Ventures - 18***
AOL Online, Inc./Time Warner Inc.
Chevron Corporation/Texaco Inc.
Computer Sciences Corporation/Mynd Corporation
Dow Chemical Company/Union Carbide Corporation
El Paso Energy Corporation/Coastal Corporation
El Paso Energy Corporation/Pacific Gas & Electric (PG&E Gas Transmission Teco, Inc. and P G &E Gas Transmission Texas Corporation)
Koch Industries, Inc./Entergy Corporation
Lafarge S.A./Blue Circle Industries PLC
Manheim Auctions, Inc./ADT Automotive Holdings, Inc.
MCN, parent of Michigan Consolidated Gas Company/DTE - parent holding company of The Detroit Edison Company
Metso Oyj/Svedala Industri AB
Novartis AG/AstraZeneca PLC
Philip Morris Companies, Inc./Nabisco Holdings Corp.
SmithKline plc/Glaxo Wellcome plc.
Siemens AG/Atecs Mannesmann
Tyco International, Ltd./Mallinckrodt, Inc.
Valspar Corporation/Lilly Industries, Inc.
Winn-Dixie Stores, Inc./Jitney-Jungle Stores of America, Inc.

## Fiscal Year 2001
*(Continued)*

### Part II Consent Agreements Accepted for Comment *(Continued)*

***Nonmergers - 1***
FMC Corporation and Asahi Chemical Industry Co. Ltd.

### Civil Penalty Actions Filed

***Order Violation - Mergers and Joint Ventures - 1***
Boston Scientific Corporation

### Permanent Injunctions Authorized - 1

***Mergers and Joint Ventures***
The Hearst Trust/The Hearst Corporation/First DataBank

### Merger Transactions Abandoned - 4

## Total Merger and Nonmerger Enforcement Fiscal Year 2001 - *27*
## (includes 1 civil penalty action)

# Fiscal Year 2000

**Part III Administrative Complaints**
***Nonmergers - 1***
Hoechst Marion Roussell (now called Aventis)/Andrx Corporation

**Part II Consent Agreements Accepted for Comment**
***Mergers and Joint Ventures - 18***
Agrium, Inc./Union Oil Company of California (Unocal)
Boeing Company/Hughes Space and Communications subsidiary of General Motors Corporation
Delhaize Freres et cie "Le Lion" S.A./Hannaford Bros. Co.
Dominion Resources, Inc./Consolidated Natural Gas
Duke Energy Corp./Phillips Petroleum
El Paso Energy Corp./Sonat Inc.
Exxon Corporation/Mobil Corporation
Fidelity National Financial/Chicago Title Corporation
FMC Corp./Solutia Inc.
Hoechst AG/Rhone-Poulenc
MacDermid, Inc./Polyfibron Technologies, Inc.
Precision Castparts Corporation/Wyman-Gordon Company
Pfizer Inc./Warner-Lambert Company
Reckitt & Colman plc/NRV Vermogenswerwaltang GmbH/Benckiser N.V.
RHI AG/Global Industrial Technologies, Inc.
Rhodia, Donau Chemie AG/Albright & Wilson PLC
Service Corporation International/LaGrone Funeral Home
VNU N.V./Nielsen Media Research, Inc

***Nonmergers - 8***
Abbott Laboratories and Geneva Pharmaceuticals
Alaska Healthcare Network
Wisconsin Chiropractic Association and Berkley and Cassellius, MD's
Bertelsmann Music Group; EMI Music Distribution; Sony Corp. of America; Time-Warner Inc.; Universal Music and Video Distribution
Colegio de Cirujanos Dentistas de PR
McCormick & Company
Nine West Group Inc.
Texas Surgeons, P.A.

## Fiscal Year 2000
*(Continued)*

**Preliminary Injunctions Authorized**

***Mergers and Joint Ventures - 5***
BP Amoco/ARCO
Conso International Corp.(owner of Simplicity)/McCall Pattern Co.
H.J. Heinz Co./Milnot Holding Co. (owner of BeechNut Nutrition Corp.)
Kroger Company/Winn-Dixie
Swedish Match AB/National Tobacco Company, L.P.

***Merger Transactions Abandoned - 9***

## *Total Merger and Nonmerger Enforcement Fiscal Year 2000 - 41*